



PATENT
26537.00100

#3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

JAMES KLASSEN

Serial No: 10/072,095

Filed: February 8, 2002

For: ROTARY POSITIVE DISPLACEMENT
DEVICE

Art Unit: Not Assigned

Examiner: Not Assigned

**PETITION UNDER 37 C.F.R. § 1.78(a)(6) FOR
ACCEPTANCE OF UNINTENTIONALLY DELAYED
PRIORITY BENEFIT CLAIM**

Office of Petitions
Box DAC
Commissioner for Patents
Washington, D.C. 20231

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Date of Deposit

Kathy Hinckley

Name

[Signature] 07/15/02

Signature

Date

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OFFICE OF PETITIONS

Dear Sir:

The above-identified non-provisional patent application having been filed after November 29, 2000, in accordance with 37 C.F.R. § 1.78(a)(6), Applicant respectfully petitions for acceptance of a claim of priority under 35 U.S.C. § 119(e) in the above-identified pending patent application based on provisional application Serial Number 60/267,969 filed on February 8, 2001.

In accordance with 37 C.F.R. § 1.17(t), the Commissioner is hereby authorized to charge the amount of \$1,280.00 to cover the fee for this petition to Deposit Account No. 50-1796, referencing docket number 26537.00100. A copy of this petition is enclosed.

Applicant hereby states that the entire delay between the date the claim was due under 37 CFR § 1.78(a)(5) [that is, June 8, 2002] and the date this claim is being filed was unintentional. With the original filing papers for the instant application, Applicant submitted an unsigned Declaration and Power of Attorney copy annexed hereto, which indicated a claim of priority of provisional application Serial No. 60/267,969.

An amendment to the instant application is enclosed which inserts reference to provisional application Serial No. 60/267,969 as required under 37 CFR § 1.78(a)(5).

07/19/2002 AWONDAF1 00000057 501796 10072095

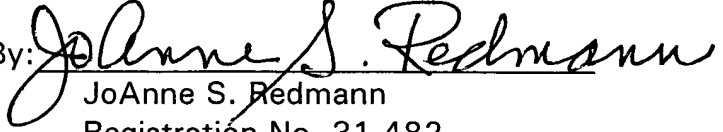
01 FC:091 1280.00 CH
Adjustment date: 04/17/2003 AKELLEY
07/19/2002 AWONDAF1 00000057 501796 10072095
01 FC:091 1280.00 CR

If it should be determined that for any reason either an insufficient fee or an excessive has been paid, please charge any insufficiency or credit any overpayment necessary to the filing of this petition to Deposit Account No. 50-1796, referencing docket number 26537.00100. A copy of this petition is enclosed.

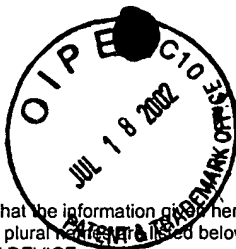
Respectfully submitted,

CROSBY, HEAFEY, ROACH & MAY

Date: July 15, 2002

By: 
JoAnne S. Redmann
Registration No. 31,482
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DECLARATION and POWER OF ATTORNEY

☒ ORIGINAL
☐ CONTINUATION
☐ DIVISIONAL

As a below named inventor, I declare that the information given herein is true, that I believe that I am the original, first and sole inventor (if only one name is listed as 1 below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:
ROTARY POSITIVE DISPLACEMENT DEVICE.

the specification of which is attached hereto unless the following box is checked:

☐ was filed on _____ as United States Application Number or PCT International Application Number _____
and was amended on _____.

My residence, post office address and citizenship are as stated below next to my name.

I acknowledge my duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations § 1.56(a). I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above. I hereby claim foreign priority benefits under Title 35, United States Code, § 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

PRIOR FOREIGN APPLICATION(S)

COUNTRY	APPLICATION NUMBER	DATE OF FILING Month Day Year	PRIORITY CLAIMED UNDER 35 U.S.C. 119
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I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

60/267,969	February 8, 2001	pending
(Application Serial No.)	(Filing Date)	(Status)

POWER OF ATTORNEY: As a named inventor, I hereby appoint the following attorney(s) and/or Agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

J. William Wigert, Reg. No. 24,582; JoAnne Redmann, Reg. No. 31,482; Stefan J. Kirchanski, Reg. No. 36,568; Nathan P. Koenig, Reg. No. 38,210; Doyle B. Johnson, Reg. No. 39,240; John W. Carpenter, Reg. No. 39,129; and Tobi C. Clinton, Reg. No. 43,553

Send correspondence to:

☒ Customer Number **28983**



CROSBY, HEAFEY, ROACH & MAY
1901 Avenue of the Stars, Suite 700
Los Angeles, CA 90067

DIRECT TELEPHONE CALLS TO:
JoAnne S. Redmann
310-734-5277

(Please Print)

1	Name of Inventor James KLASSEN	Residence: CITY Irvine	STATE or COUNTRY California
	Post Office Address 2253 Martin Street #420C, Irvine, CA 92612		CITIZENSHIP CANADA
2	Name of Inventor	Residence: CITY	STATE or COUNTRY
	Post Office Address		CITIZENSHIP
3	Name of Inventor	Residence: CITY	STATE or COUNTRY
	Post Office Address		CITIZENSHIP
4	Name of Inventor	Residence: CITY	STATE or COUNTRY
	Post Office Address		CITIZENSHIP

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

SIGNATURE OF INVENTOR 1	SIGNATURE OF INVENTOR 2
DATE	DATE
SIGNATURE OF INVENTOR 3	SIGNATURE OF INVENTOR 4
DATE	DATE

OFFICE OF PETITIONS

15294976.1



#6
PATENT
26537.00100

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

JAMES KLASSEN

Serial No: 10/072,095

Filed: February 8, 2002

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DEVICE

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Commissioner for Patents

Washington, D.C. 20231

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First Class mail in an envelope
addressed to: Commissioner for Patents
Washington D.C. 20231, on

July 15, 2002

Date of Deposit

Kathy Hinckley

Name

Signature

07/15/02

Date

**PETITION TO PROCEED WITH THIS APPLICATION FOR PATENT
UNDER 37 C.F.R. 1.47(b)**

I. INTRODUCTION

The present invention for highly valuable technology (called the "D-2 Technology") is owned by the Applicant, Outland Technologies (USA), Inc. ("Outland USA"), a wholly owned subsidiary of Outland Technologies (Canada), Inc. ("Outland Canada"). After repeated demands, James Klassen ("Klassen"), the sole inventor of the present patent application (hereafter the "D-2 Patent Application"), Serial No. 10/072,095, has failed and refused to execute the declaration for the D-2 Patent Application. Demand to sign the declaration was made on Klassen by delivery to him of the declaration and the D-2 Patent Application at his last known home address of 2253 Martin Street, #420C, Irvine, CA 92612, and through his attorney, Stanley Jones, Esq. at 1920 Main Street, Suite 1070, Irvine, CA 92614. (See attached Declaration of JoAnne S. Redmann ✓ in Support of Petition to Proceed with Application for Patent Under 37 C.F.R. 1.47(b) (the "Redmann Decl.," ¶¶s 1 - 5).) Klassen was also requested to sign the

confirmatory assignment for the D-2 Technology (confirming Outland USA's ownership) and he has failed and refused to do so.

Klassen, and those acting in concert with Klassen, have wrongfully claimed an interest in the ownership in the D-2 Technology. Klassen and his cousin Terry Martin ("Martin"), have failed to execute documents, falsified documents, failed to disclose material information, misrepresented material information, and denied the true ownership of the D-2 Technology, and they have otherwise breached their fiduciary duty to Outland USA and Outland Canada.

In a lawsuit now pending in the United States District Court for the Western District of Washington at Seattle, Case No. CV-02-0229Z (the "District Court Action"), Outland Canada on its behalf and on behalf of Outland USA, has pending claims against Klassen and Martin for, *inter alia*, breach of fiduciary duty, fraud, and conversion of the D-2 Technology. Outland Canada has asked the U.S. District Court to rule that the D-2 Technology is owned by Outland USA without any claim of right by Klassen. Outland USA is confident that, based on the relevant facts, the U.S. District Court will rule that the D-2 Technology is owned by Outland USA. (See Exhibit A, Defendants' First Amended Answer, Affirmative Defenses, and Counterclaims (the "Amended Counter-complaint") filed in response to the Amended Complaint for Declaratory Judgment, Breach of Fiduciary Duty, Tortious Interference with Contract, Breach of Employment Contracts, Failure to Pay Wages, Conversion, Replevin and Appointment of Receiver (attached hereto as Exhibit B, the "Amended Complaint").)

Outland Canada also filed a motion for preliminary injunction in the District Court Action to enjoin Klassen from prosecuting any patent application for the D-2 Technology or transferring or otherwise encumbering the D-2 Technology. In support of its motion, Outland Canada provided the U.S. District Court with more than sufficient facts (through affidavits and documents) to support the U.S.

District Court's finding that it is likely that Outland Canada would prevail on its claim that Outland USA owns the D-2 Technology. That is, based on the facts demonstrated, the U.S. District Court would by the weight of authority in its jurisdiction award title of the D-2 Technology to Outland USA. Those affidavits and declarations are attached hereto and made a part hereof by reference, and confirm that the U.S. District Court would award title of the D-2 Technology to Outland USA. (See Exhibit C1, Defendants' Motion for Preliminary Injunction; Exhibit C2, Declaration of Ken Bell in Support of Defendants' Motion for Preliminary Injunction (the "Bell Decl."); and Exhibit C3, Declaration of Michael Hughes in Support of Defendants' Motion for Preliminary Injunction (the "Hughes Decl.").)

In response to Outland Canada's motion for a preliminary injunction, Klassen entered into a consent stipulation and order (Exhibit D, the "P.I. Order") with Outland Canada that prohibits him from prosecuting any patent application for the D-2 Technology or otherwise transfer or encumber the D-2 Technology.

Outland USA is confident that the District Court Action will conclude with an order from the U.S. District Court assigning the D-2 Technology to Outland USA. The D-2 Patent Application was filed on February 8, 2002, which is that last date for filing while still claiming priority of the earlier provisional application, Serial No. 60/267,969 (the "Provisional D-2 Application"), filed on February 8, 2001. Outland USA must now be permitted to prosecute the D-2 Patent Application while the District Court Action is pending or Outland USA's patent rights will be irreparably damaged.

Outland USA is the only entity authorized to proceed with the D-2 Patent Application as Klassen is now enjoined. If Outland USA is not permitted to prosecute the D-2 Patent Application then the priority date will be lost, and no one will have the right to prosecute the D-2 Patent Application during the pendency of

the District Court Action. To preserve the rights of the parties during the District Court Action, grant of the present petition is necessary. Moreover, Outland USA has entered into agreements with third parties concerning the commercialization of the D-2 Technology. These agreements will be compromised by any delay in the prosecution of the D-2 Patent Application. Thus, if Outland USA does not prosecute the D-2 Patent Application its priority claim will be lost, and the patent rights in the D-2 Technology will be abandoned and lost. Outland USA will suffer a substantial injury that is not accurately measurable or adequately compensable; it will be irreparably harmed.

Outland USA now seeks and is entitled to a determination from the U.S. Patent and Trademark Office, pursuant to 37 C.F.R. 1.47(b), allowing Outland USA to prosecute this D-2 Patent Application.

II. STATUS OF THE D-2 PATENT APPLICATION AND DISTRICT COURT ACTION

On February 8, 2001, while Martin was the President and Klassen was an inventor/employee for Outland USA, Martin had Klassen secretly file the Provisional D-2 Application. Klassen and Martin later left Outland USA in a dispute over control of Outland USA and Outland Canada. After Klassen and Martin left, Outland USA prepared the present D-2 Patent Application claiming priority of Provisional D-2 Application. Outland USA requested that Klassen sign the declaration. Klassen refused. (Redmann Decl., ¶¶ 1 - 5.) Outland USA filed the present D-2 Patent Application on February 8, 2002. Outland USA was advised by Klassen's counsel on February 8, 2002, that Klassen had filed his own nonprovisional patent application for the D-2 Technology (the "Klassen Patent Application"). (Redmann Decl., ¶ 4, Letter from Stanley R. Jones, Esq., Exhibit 2.)

After leaving Outland USA, Klassen and Martin filed suit against Outland Canada (the District Court Action) alleging that they were entitled to

control of Outland USA. (See Exhibit B, Amended Complaint.) The parties attempted to settle their dispute, but to no avail. The Applicant, Outland USA, then received a Notice to File Missing Parts of Nonprovisional Application for this D-2 Patent Application, which was mailed on March 12, 2002.

On April 11, 2002, in the District Court Action, Outland Canada counterclaimed against Klassen and Martin (as described above). (See Exhibit A, Amended Counter-complaint.) On May 2, 2002, Outland Canada filed a motion for preliminary injunction (see Exhibits C1 – C3) providing a factual basis (set forth in documents and affidavits) for its claim that the D-2 Technology belonged to Outland USA, and requesting that Klassen be enjoined from prosecuting the Klassen Patent Application and/or transferring or otherwise encumbering the D-2 Technology. On May 17, 2002, the U.S. District Court entered the P.I. Order by consent of the parties that prohibits Klassen from proceeding with the Klassen Patent Application or any other patent application for the D-2 Technology, or transferring or otherwise encumbering the D-2 Technology. (See Exhibit D.)

III. FACTS

A. KLASSEN AND MARTIN FORM OUTLAND USA

Klassen and Martin formed T&J Enterprises, a general partnership, in the mid-1990s to use Klassen's unique ability to invent new and useful patentable inventions. Then, Klassen and Martin created a second business entity, Outland Design, for that same purpose. (Exhibit C2, Bell Decl. ¶¶s 3 – 4.) Outland Design was and is a technical design and development company managed and controlled by Martin and Klassen (Exhibit B, Amended Complaint, ¶ 18), with Klassen serving as its employee/inventor. Klassen and Martin are members of Outland Design's board of directors.

One of Klassen's earlier inventions is a rotary positive displacement device (the "CvR™ Technology") for use with hydraulic technologies. (Exhibit C2, Bell Decl. ¶ 3.) A patent application was filed by Outland Design for the CvR™ Technology on March 9, 1995 and has since issued as U.S. Patent No. 5,775,196 for Rotary Positive Displacement Engine, issued May 26, 1998. The patent applications for Klassen's other patentable inventions were filed in the name of Outland Design and later Outland USA. (Exhibit C3, Hughes Decl. ¶¶ 9 – 10.)

Beginning with the formation of T&J Enterprises, Klassen and Martin looked for funding to commercialize the CvR™ Technology and other technologies invented by Klassen. To that end, Outland Design entered into a letter agreement dated February 26, 1997 (the "EcoTech Agreement") to establish Outland USA as the company to commercialize the CvR™ Technology, hydraulic technologies and other technologies invented by Klassen. (Exhibit C2, Bell Decl. ¶ 5.)

As part of the EcoTech Agreement, half of the stock of Outland USA was issued to Outland Design in exchange for Outland Design's agreement (a) to assign the CvR™ Technology to Outland USA; and, (b) that all existing and future inventions and technology in the area of hydraulic technologies developed by Outland Design (*i.e.*, Klassen) are owned by Outland USA. (Exhibit C2, Bell Decl. ¶ 5.)

From the beginning, Outland USA was run by Martin as president and chief executive officer. Outland Canada was subsequently formed to market and license the Outland USA technology. The companies were later reorganized so that Outland USA became a wholly-owned subsidiary of Outland Canada. Martin became the chairman of the board for both companies. (Exhibit C2, Bell Decl. ¶ 6.)

To fund the development efforts of Outland USA, Martin and Klassen determined that they needed to continue to raise money. Martin and Klassen

brought in Canadian investors and a Canadian management team (the "Canadian Management"). The Canadian investors recognized and relied upon the substantial value in the inventions and technology owned or to be owned by Outland USA and Klassen's unique role as a substantial beneficial stockholder and employee/inventor for Outland USA.

From April, 2000 through May, 2001, the Canadian investors invested more than \$15 million (Canadian) in Outland Canada. These funds were deposited with Outland Canada and then distributed directly to Outland USA by Outland Canada on an as-needed basis, with the need determined by Martin and Klassen, and their Outland USA management. (Exhibit C2, Bell Decl. ¶¶s 6 - 10.)

Klassen continued to be the driving inventive and technical force behind Outland USA. Outland Canada continued to be the administrative, marketing and funding vehicle for Outland USA.

B. MARTIN AND KLASSEN HIDE THE D-2 TECHNOLOGY AND OUTLAND USA'S OWNERSHIP OF IT

Martin told the Canadian Management that Klassen worked for Outland USA and this employee relationship vested title to the D-2 Technology in Outland USA. Martin created an organization chart for Outland USA that showed that both he and Klassen were Outland USA employees. (Exhibit C2, Bell Decl. ¶ 14, Ex. A.) Klassen worked every day at the Outland USA facilities. He was directed and controlled in his inventive work activities by Martin as president of Outland USA. He worked with and for Edward Hubbard, Vice President of Research and Development as Technical Director, and when Hubbard left the company in late 2000/early 2001, Klassen assumed the position of Vice President of Research and Development. His full-time work for Outland USA consisted of the development of the CvR™ Technology and improvements to it, as well as new developments in hydraulic technology generally, such as the D-2 Technology.

Those individuals that helped him with his work were all employees of Outland USA. His desk, computer, telephone, computer aided design systems and milling machines, and supplies were all those of Outland USA. His employee health insurance was provided for him through Outland USA. His compensation was generated through Outland USA. (To avoid visa problems, Klassen was paid through Outland Design; funds were transferred from Outland USA to Outland Design.) All of Klassen's patent applications for his hydraulic inventions were assigned to Outland USA and the patent applications were prosecuted by Outland USA. (Exhibit C2, Bell Decl. ¶ 15; Exhibit C3, Hughes Decl. ¶¶ 9 - 10.)

On December 22, 2000, Martin told Canadian Management about Klassen's invention of the D-2 Technology and confirmed to Canadian Management that the D-2 Technology belonged of Outland USA. (Exhibit C2, Bell Decl. ¶ 17.) Then, in secret, Martin instructed Outland USA's patent counsel, Michael Hughes, Esq., to file the Provisional D-2 Application without an assignment to Outland USA. (Exhibit C3, Hughes Decl. ¶¶ 5, 7, and 9.) All previous patent applications for hydraulic technologies were assigned to Outland USA. When questioned by Hughes regarding the filing of the Provisional D-2 Application in the name of Klassen and not Outland USA, Martin told Hughes that everything was going to be worked out with "Outland" and he should not worry. (Exhibit C3, Hughes Decl. ¶ 5.) Hughes was later instructed by Martin to take the Provisional D-2 Application to his home and keep it there. The prototypes built for the device embodying the D-2 Technology were kept in the Outland USA safe on its premises in Irvine, California. Files related to the D-2 Technology were worked on and kept on Klassen's Outland USA company computer.

After secretly filing the Provisional D-2 Application, Martin tried to unsuccessfully "sell" the D-2 Technology (which was already owned by Outland USA) to Outland USA for approximately \$1.7 million by trying unsuccessfully to

convince Canadian Management that Outland USA did not own the D-2 Technology. (Exhibit C2, Bell Decl. ¶ 23.) Then, in late 2001, Martin claimed to Canadian Management that Klassen did not work for Outland USA; Martin demanded that Outland Canada pay him and Klassen additional money for the D-2 Technology or they would leave and take the D-2 Technology with them.

As an employee/inventor for Outland USA, Klassen worked in a position of trust and confidence. He owed a duty to Outland USA to not act in a manner that was inconsistent with his duty to his employer. In addition, Klassen was and is a beneficial and substantial stockholder in Outland USA; Klassen had a fiduciary duty to act in the best interests of Outland USA. Klassen has failed to act according to his fiduciary duty to Outland USA.

To date, Klassen has not executed the assignment for the D-2 Technology to Outland USA, and has failed and refuses to sign the declaration for the D-2 Patent Application. Instead, Klassen left Outland USA with Martin and then filed suit against Outland Canada and members of the Canadian Management (the District Court Action).

IV. OUTLAND CANADA IS ENTITLED TO PROSECUTE THE D-2 PATENT APPLICATION

Prosecution of the D-2 Patent Application by Applicant (Outland USA) is authorized under 37 C.F.R. 1.47 which states a party with "sufficient proprietary interest in the matter justifying such action may make an application for patent on behalf of and as an agent for all of the inventors." Outland USA brings this petition to prosecute the D-2 Patent Application on its behalf and as agent for James Klassen pursuant to the noted code section.

Outland USA owns all D-2 Technology patent rights because (1) Klassen was an employee of Outland USA; (2) Klassen was hired by Outland USA to invent; and (3) an employee that is hired to invent is obligated to assign his

inventions to his employer. In addition, Outland USA owns the D-2 Technology by virtue of Klassen's fiduciary relationship with Outland USA.

The very nature of patents weighs heavily in favor of permitting Outland USA to proceed here. This request is particularly compelling as the D-2 Patent Application claims priority based upon the filing date of the Provisional D-2 Application, and Klassen is now enjoined by the P.I. Order from making any application on his own behalf; only Outland USA may currently prosecute the D-2 Patent Application. Outland USA should be permitted to proceed to preserve the rights of the parties in the D-2 Technology as Klassen may not now proceed. If Outland USA is not permitted to proceed, it will be irreparably harmed in that its patent protection for the D-2 Technology and its priority date to which it is entitled will be substantially compromised or lost. As the possibility of irreparable injury is so significant, Outland USA's present petition should be granted.

A. OWNERSHIP OF TECHNOLOGY

Ownership of technology springs from its invention. As many inventions occur in the context of an employer/employee relationship, disputes regarding ownership of patentable inventions may arise between an employer and an employee, or fiduciary. For employees, the employer will have ownership if the employer contracted with the employee for such ownership. "[C]ontract law allows individuals to freely structure their transactions and employee relationships. An employee may thus freely consent by contract to assign all rights in inventive ideas to the employer." Teets v. Chromalloy Gas Turbine Corp., 83 F.3d 403, 407 (Fed. Cir. 1996).

Where an inventor/employee enters into an employment contract that conveys his inventions to his employer, the rights and liabilities of the employer and the employee are determined by the metes and bounds of the employment

contract. State courts apply general principles of contract and property law to transactions regarding patent ownership unless it interferes with federal patent policy. See, Farmland Irrigation Co., Inc. v. Dopplmaier, 48 Cal. 2d 208, 217; 308 P.2d 732, 737 (1957). State law generally governs ownership rights in patentable inventions. However, state law (including the State of Washington and most other states) usually follows leading U.S. Supreme Court decisions relating to ownership of patentable inventions. As a consequence, the state law from state to state of patent ownership in the context of employment relationships is generally uniform. See, for example, Daniel Orifice Fitting Co. v. Whalen et al., 198 Cal. App. 2d 791, 18 Cal. Rptr. 659 (1962) (a former officer/employee enjoined from competing and ordered not to disclose ideas developed while an employee and to assist in obtaining patent rights; employee's duties as chief engineer, included designing and supervising the design of products).

Under state law, an employees may and do contract away rights in their inventions. Even if an employee has not signed a written contract, his employer may never the less own his invention. If an employee is hired to invent, his inventions made during the duration of his employment belong to his employer – a contract to assign is implied. Thus, even in situations where the employee has not executed the contract, an employer may still own an employee's invention under the theory of an implied-in-fact contract (i.e., the employee exercised his inventive faculties for the employer) to assign patent rights. "An implied-in-fact contract is an agreement 'founded upon a meeting of the minds, which, although not embodied in an express contract, is inferred, as a fact from conduct of the parties showing, in the light of the surrounding circumstances, their tacit understanding.'" Baltimore & Ohio R.R. v. United States, 261 U.S. 592, 597, 67 L.Ed. 816, 43 S.Ct. 425 (1923)." Teets v. Chromalloy Gas Turbine Corp., *supra*. In such situations, contracts to invent are implied between the employee and the

employer, with state contract principles governing these implied-in-fact contracts. Erie Railroad v. Tompkins, 304 U.S. 64 (1938).

B. OUTLAND USA OWNS THE D-2 TECHNOLOGY

1. Klassen was an Employee of Outland USA

At the time that Klassen invented the D-2 Technology, Outland USA was located in the State of Washington. (Exhibit C3, Hughes Decl. ¶¶s 4 and 8.) The facts, evaluated under the relevant law of the State of Washington (where Klassen was employed by Outland USA at the time he invented the D-2 Technology), confirm Klassen was an employee of Outland USA.

Under Washington law, "the chief, and most decisive, factor in determining whether the relationship is that of employer and employee ... is the right of control over the work or thing to be done." Miles v. Pound Motor Co., 10 Wn.2d 492, 506, 117 P.2d 179 (1941) (distinguishing employees from independent contractors). Other considerations may include "the nature of the business, the time, place, duration, quantity, and nature of the work performed, the skill and supervision required, the furnishing of equipment, materials, and supplies, the payment of the necessary expenses, the basis of compensation for the work, the right to hire and discharge assistants, and the right to terminate the employment." Id. See also Marquis v. City of Spokane, 130 Wn.2d 97, 110, 922 P.2d 43 (1996); Sills v. Sorenson, 192 Wash. 318, 324, 73 P.2d 798 (1937); Hollingsworth v. Robe Lumber Co., 182 Wash. 74, 77, 45 P.2d 614 (1935).

Outland USA was in control of Klassen's inventive work on the D-2 Technology. As discussed in the Facts section above, Klassen worked at Outland USA, was managed by Outland USA, and was assisted by other Outland USA employees. (Exhibit C2, Bell Decl. ¶ 19.) He received all of his equipment and material from Outland USA, was on the Outland USA health insurance plan, and

was paid by Outland USA (through Outland Design for purposes of his U.S. work visa). (Exhibit C2, Bell Decl. ¶¶s 9 and 19.) Looking to the “right of control,” the specific tasks assigned and all the other factors, a Washington court (the U.S. District Court) should determine that Klassen was an employee of Outland USA at the time he invented the D-2 Technology and that Outland USA owns the D-2 Technology.

2. Klassen Was An Inventor for Outland USA

Outland USA was created to commercialize the hydraulic technologies, and other technologies invented by Klassen; the whole purpose of Outland USA was to commercialize Klassen’s inventions. Klassen was employed – and paid – specifically to invent such hydraulic technologies, and did so, both in terms of improvements to the CVR™ Technology as well as the D-2 Technology itself. (Exhibit C2, Bell Decl. ¶ 17.)

Disputes between employers and employees over ownership of patent rights have been well litigated in the courts of this country. See McClurg v. Kingsland, 42 U.S. (1 How.) 202, 11 L.Ed. 102 (1843). It is “well-settled at the general level ... [that] an employer owns employee inventions if the employee was specifically hired to exercise his or her ‘inventive faculties.’” 8 DONALD S. CHISUM, *Chisum on Patents*, §22.03 (2001) at 22-11. See Standard Parts Co. v. Peck, 264 U.S. 52, 59-60, 44 S.Ct. 239, 68 L.Ed. 560 (1924) holding that an invention is the property “of him who engaged the services and paid for them.” See also United States v. Dubilier Condenser Corp., 289 U.S. 178, 187-188, 53 S.Ct. 554, 77 L.Ed. 1114 (1933). “When the purpose for employment thus focuses on invention, the employee has received full compensation for his or her inventive work.” Teets v. Chromalloy Gas Turbine Corp., *supra*, and the invention belongs to the employer.

As noted above, questions of patent ownership, unlike issues regarding inventorship, are contract issues to which state contract principles apply. Erie Railroad v. Tompkins, *supra*. Klassen's obligation to assign his inventions under this rule arises pursuant to an implied-in-fact contract between Klassen and Outland USA. *See Teets*, 83 F.3d at 407. An implied-in-fact contract arises out of the parties' conduct, as opposed to one that arises out of a written or oral agreement. *See Plumbing Shop v. Pitts*, 67 Wn.2d 514, 517, 408 P.2d 382 (1965).

For this principle to apply, the employment relationship at the time of the inventive work is examined to determine if the parties had an implied-in-fact contract to assign patent rights. In resolving particular disputes, the courts must balance the policies of the patent system with those of contract law. Evidentiary factors that carry weight are: 1) previous patent assignments for other inventions by the employee; 2) custom and practice for other similarly situated employees to assign; (3) if the invention was conceived during the time of employment; (4) who originally posed the problem solved by the invention; 5) the employee's authority within the company to determine to whom to give a problem for solution; 6) the relative importance of the idea to the employer's business; 7) a previous inconsistent position on other inventorship by the employer; 8) an agreement by the employer to pay royalties to the employee; 9) payment of patent procurement expenses by the employer or employee; and 10) the absence of initial interest by the employer when the employee first exposed the idea. Chisum, *supra* at §22.03. For example, an employer claimed an employee's inventive work where the employer specifically hires or directs the employee to exercise inventive faculties. United States v. Dubilier Condenser Corp., 289 U.S. 178, 187 (1933); Standard Parts Co. v. Peck, 264 U.S. 52, 59-60 (1924).

Here, all previous hydraulic technology patent applications were assigned by Klassen to Outland USA. No other individuals conceived inventions for Outland USA. Klassen was responsible for inventing hydraulic technologies for Outland USA. All Klassen's previous patent applications for hydraulic technologies were assigned to Outland USA, and Outland USA paid for and controlled the prosecution of these patent applications. (Exhibit C3, Hughes Decl. ¶¶ 5, 9 and 10.)

The evidentiary factors noted above confirm that Klassen was an employee/inventor of Outland USA. And, while there are a number of evidentiary factors which may be considered in the determination of whether an employment is "an employment to invent," a "primary factor ... is the specificity of the task assigned to the employee." Chisum § 22.03[2] at 22-30. Klassen's tasks were specific. Not only was he employed and paid to invent hydraulic technologies, but the corporation itself was formed specifically to raise funding and commercialize Klassen's hydraulic technology inventions. (Exhibit C2, Bell Decl. ¶ 7.) The core business of Outland USA was the commercialization of the hydraulic technologies invented by Klassen. Just as there is no dispute that the CvR™ Technology belongs to Outland USA, or that the CvR™ Technology improvements belong to Outland USA, there should be no dispute that the D-2 Technology belongs to Outland USA.

3. Klassen Is Obligated To Assign His Inventions to Outland USA

Klassen was working on inventions in the area of hydraulic technology for Outland USA, and the D-2 Technology is hydraulic technology. An individual employed to make an invention, who succeeds, during his term of service, in accomplishing that task, is bound to assign to his employer any patent obtained. Klassen has only produced that which he was employed to invent. Klassen was employed to give his time and scientific skills for the purpose of trying to discover

and improve hydraulic technologies. In other words, he was paid during the period of his employment for the application of his inventive powers and any resultant inventions; the D-2 Technology belongs to Outland USA.

All hydraulic inventions of Klassen were previously assigned to and owned by Outland USA. The D-2 Technology is no exception. Klassen now wrongfully claims an interest in the D-2 Technology, however, conduct of both parties described above created an implied-in-fact contract for him to continue to execute assignments and assign *all* such technologies. That was the whole point of employing him, and paying him, as an inventor. Outland USA, "[h]aving given consideration for inventive services and having assumed the risk that such services might not be successful, ... should receive as the benefit of the bargain any resulting intellectual property rights." Chisum, supra, § 22.03[2] at 22-30. Klassen is obligated to assign to Outland USA the D-2 intellectual property rights.

4. Klassen was a Fiduciary of Outland USA and Should Assign the D-2 Technology Based on his Fiduciary Relationship with Outland USA

Outside of the employment relationship, an employer may be the beneficial owner of a patent for an invention made by a person who occupies a position of special trust in the employer organization, such as a director, officer or stockholder. Fiduciaries such as partners, managers, shareholders, officers, directors and others in similar capacities are under additional obligations (beyond those of just employees) by common law to assign their inventions and patents. The theory of corporate opportunity is often relied upon by the courts in finding that the fiduciary must assign his patentable invention to the company. That is, the fiduciary owes a greater duty of loyalty to the company as a fiduciary and his inventions are a corporate opportunity which belong to the company. In Mechanical Plastics Corp. v. Thaw, 197 U.S.P.Q. 651 (1977 N.Y. Misc.) the

assignment of patents was required of defendant who was chief operating officer. The New York court held that the defendant owed fiduciary duty of loyalty to corporate plaintiff and in this position of fiduciary, his inventions were for the benefit of the company.

Klassen was the inventive force behind Outland USA. At the time of the invention of the D-2 Technology, Klassen was the inventor/employee and a beneficial owner, with Martin, of almost half the stock of Outland USA. Martin and Klassen led the Canadian Management of Outland Canada to believe that all of Klassen's work in his inventive capacity in any area related hydraulic technology, including the D-2 Technology was for the benefit of Outland USA.

Where an inventor occupies a position of trust and confidence to the business, it has been held to be inequitable for that individual to retain title to an invention that more properly belongs with the business. The individual is compelled to assign his interest in the invention to the business. Kennedy v. Wright, 676 F. Supp. 888 (C.D. Ill. 1988). The court in Kennedy, found that Kennedy used company finances and facilities to bring about the inventions and the company used the patented technology to generate its business. The patents were "manifestly important to the financial well being of the company." Id. at 893. Kennedy's claim of title to the patents would have usurped the corporate opportunity of the company. The Kennedy court required Kennedy to assign the patents, reasoning that Kennedy was in a special position of confidence and trust with the business.

Here, the D-2 Technology is hydraulic technology that is the core business of Outland USA. Klassen was the inventive force behind Outland USA's technology development in the hydraulic area. Klassen was a fiduciary of Outland USA when he invented the D-2 Technology. He was a beneficial stockholder and insider at Outland USA. As a fiduciary the D-2 Technology was invented by

Klassen on behalf of Outland USA and for Outland USA. In his fiduciary capacity, it is "'only consistent with good faith that he should recognize [the company's] ownership of the patent issued to him,' the entire right and interest in the patent * * * belong to the company despite absence of a specific contract by the inventor to assign the invention. Dowse v. Federal Rubber Co., 254 Fed. 308, 310 (N.D. Ill. 1918)." LeFiell v. United States, 162 Ct. Cl. 865, 138 U.S.P.Q. 312 (Ct. Cl. 1963).

C. OUTLAND USA's PETITION SHOULD BE GRANTED

Outland USA owns the D-2 Technology. Outland USA can clearly demonstrate so. To prevail on a petition under 37 C.F.R. 1.47(b), Outland USA must demonstrate that a court of competent jurisdiction would by the weight of authority in that jurisdiction award title of the invention to the Applicant. Outland USA has demonstrated here that Klassen was an inventor/employee of Outland USA, vesting title and ownership of the D-2 Technology with Outland USA.

Outland USA has demonstrated that a court of competent jurisdiction -- the U.S. District Court in the District Court Action -- will award title of the D-2 Technology to Outland USA. (And, Klassen has stipulated to the P.I. Order that enjoins him from taking any action related to the D-2 Technology.) Thus, Outland USA has demonstrated that the U. S. District Court will confirm the D-2 Technology ownership in Outland USA. To preserve the rights of the parties and avoid irreparable damage to Outland USA, its petition should now be granted.

V. CONCLUSION

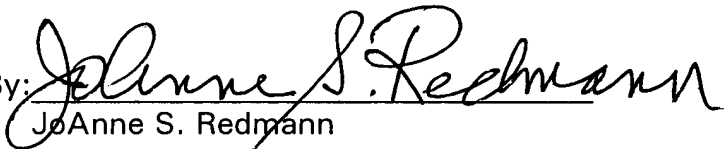
Under the Patent Act, 35 U.S.C. § 111 provides that "an application for patent shall be made, or authorized to be made, by the inventor...." Because Klassen was an employee/inventor for Outland USA, Outland USA holds equitable title to the D-2 Technology; Outland USA should be authorized to prosecute the

D-2 Patent Application. Outland USA's petition should be granted as it has satisfied the requirements for proceeding under 37 C.F.R. 1.47(b). For the reasons set forth above, Outland USA respectfully requests that its petition to proceed under 37 C.F.R. 1.47(b) be granted.

The Commissioner is authorized to charge the petition fee of \$130 and any underpayment to Deposit Account No. 50-1796, referencing docket number 26537.00100. A copy of this document is enclosed.

Respectfully submitted,
CROSBY, HEAFEY, ROACH & MAY

Date: July 15, 2002

By: 
JoAnne S. Redmann
Registration No. 31,482
Attorney for Applicant

Crosby Heafey Roach & May
1901 Avenue of the Stars, Suite 700
Los Angeles, CA 90067
Phone: (310) 734-5200
Fax: (310) 734-5299



PATENT
26537.00100

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

JAMES KLASSEN

Serial No: 10/072,095

Filed: February 8, 2002

For: ROTARY POSITIVE DISPLACEMENT
DEVICE

Art Unit: Not Assigned

Examiner: Not Assigned

Office of Petitions
Box DAC
Commissioner for Patents
Washington, D.C. 20231

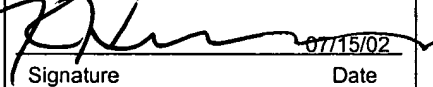
I hereby certify that this correspondence
is being deposited with the United State
Postal Service with sufficient postage for
First Class mail in an envelope
addressed to: Commissioner for Patents
Washington D.C. 20231, on

July 15, 2002

Date of Deposit

Kathy Hinckley

Name



Signature

Date

**DECLARATION OF JOANNE S. REDMANN IN SUPPORT OF
PETITION TO PROCEED WITH THIS APPLICATION FOR PATENT
UNDER 37 C.F.R. 1.47(b)**

The undersigned is the attorney of record in the above-identified patent
application and declares as follows:

RECEIVED

JUL 19 2002

OFFICE OF PETITIONS

1. On behalf of the Applicant, Outland Technologies, Inc. ("Outland
USA"), on February 7, 2002, the undersigned directed a process server, NICOLAS
CARRILLO, employed by Time Machine Network, a messenger service incorporated
in the State of California, whose business address is 132 South Beaudry Avenue,
Los Angeles, California, 90012, to deliver a copy of the patent application for the
above-identified application entitled "ROTARY POSITIVE DISPLACEMENT DEVICE"
(the "D-2 Patent Application") including specification, claims and drawings, with a

Declaration/Power of Attorney form and an Assignment form for the D-2 Patent Application to the sole inventor, JAMES KLASSEN, at his last known address, 2253 Martin Street, #420C, Irvine, California, 92612, and requested that Klassen sign the two forms and return them to the process server for delivery at my office at CROSBY, HEAFEY, ROACH & MAY, 1901 Avenue of the Stars, Suite 700, Los Angeles, California 90067. (See Affidavit of Nicolas Carillo executed on February 8, 2002, annexed hereto as Exhibit 1.)

2. Carrillo arrived at the above address at 3:49 p.m. on February 7, 2002 and met Klassen there.

3. At that time, Klassen did not sign and return the Declaration/Power of Attorney and Assignment documents to Carillo for delivery to me. However, Klassen did tell Carrillo at 3:52 p.m. to return to his address on February 8, 2002 anytime before 4:30 p.m., and implied that he would have the signed declaration available at that time.

4. On February 8, 2002, I received a facsimile letter from Klassen's attorney, Stanley R. Jones, Esq., in which he advised that Klassen would not be signing the declaration of the inventor or the assignment for the D-2 Patent Application, and that he would not execute the confirmatory assignment for the underlying technology (the "D-2 Technology"). (See Letter of Stanley R. Jones, dated February 8, 2002, a true and accurate copy is annexed hereto as Exhibit 2 and made a part hereof by reference.)

5. Based upon Jones' letter and instruction, the process server did not return to Klassen's address on February 8, 2002.

6. The Applicant, Outland USA, is a wholly owned subsidiary of Outland Technologies, Inc. ("Outland Canada"). Earlier this year, Klassen and several others filed a lawsuit in the United States District Court for the Western District of Washington at Seattle, Case No. CV02-0229Z (the "District Court Action") against Outland Canada and its management. On April 11, 2002, in the District Court Action, Outland Canada counterclaimed against Mr. Klassen (see Exhibit B to the Petition to Proceed with This Application for Patent under 37 C.F.R. 1.47(b)). with claims against Klassen for, *inter alia*, breach of fiduciary duty, fraud, and conversion of the D-2 Technology. Outland Canada has asked the U.S. District Court to rule that the D-2 Technology is owned by Outland USA without any claim of right by Klassen. Outland USA is confident that, based on the relevant facts, the U.S. District Court will rule that the D-2 Technology is owned by Outland USA.

7. On May 2, 2002, Outland Canada filed a motion for preliminary injunction (see Exhibits C1-C3 to the Petition to Proceed with This Application for Patent under 37 C.F.R. 1.47(b)) providing a factual basis (set forth in documents and affidavits) and legal analysis for its claim that the D-2 Technology belonged to Outland USA, and requesting that Klassen be enjoined from prosecuting any patent application for the D-2 Technology and/or transferring or otherwise encumbering the D-2 Technology. The motion for preliminary injunction was based on the law

of the State of Washington, as Klassen was a resident of the State of Washington when he invented the D-2 Technology.

8. With Washington co-counsel Dorsey and Whitney, at 1420 Fifth Avenue, Suite 3400, Seattle, Washington 98101, I researched and prepared the motion and memorandum for preliminary injunction, and affidavits in support. I am familiar with Washington law on the issue of Outland USA's ownership of the D-2 Technology and I was *pro hac vice* counsel in the District Court Action at the time the motion for preliminary injunction was filed by local counsel.

9. In support of its motion for preliminary injunction, Outland Canada provided the U.S. District Court with more than sufficient facts (through affidavits and documents) to support the U.S. District Court's finding that it is likely that Outland Canada would prevail on its claim that Outland USA owns the D-2 Technology. That is, based on the facts demonstrated, it is likely that the U.S. District Court would by the weight of authority in its jurisdiction award title of the D-2 Technology to Outland USA.

10. On May 17, 2002, Klassen stipulated to a preliminary injunction order that prohibits him from proceeding with a patent application on his own behalf or

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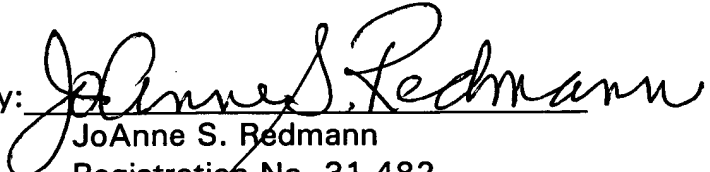
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transferring or otherwise encumbering the D-2 Technology. (See Exhibit D to the
Petition to Proceed with This Application for Patent under 37 C.F.R. 1.47(b)).

Respectfully submitted,
CROSBY, HEAFEY, ROACH & MAY

Date: July 15, 2002

By: 
JoAnne S. Redmann
Registration No. 31,482
Attorney for Applicant

Crosby Heafey Roach & May
1901 Avenue of the Stars, Suite 700
Los Angeles, CA 90067
Phone: (310) 734-5277
Fax: (310) 734-5299

AFFIDAVIT

The undersigned, under penalty of perjury, declares that:

1. The undersigned is employed by Time Machine Network, a messenger service incorporated in the state of California, whose business address is 132 South Beaudry Avenue, Los Angeles, CA 90012.

2. On February 7, 2002 at 3:49 p.m. the undersigned arrived at the last known address of James KLASSEN, at 2253 Martin Street #420C, Irvine, California, 92612 to deliver the patent application entitled "ROTARY POSITIVE DISPLACEMENT DEVICE," including specification, claims and drawings, and a Declaration/Power of Attorney form and an Assignment form to be signed by Mr. Klassen and returned to me for delivery to JoAnne S. Redmann, Esq. at CROSBY, HEAFEY, ROACH & MAY, 1901 Avenue of the Stars, Suite 700, Los Angeles, California 90067.

3. Mr. Klassen did not sign and return the Declaration/Power of Attorney and Assignment documents to me for delivery to Ms. Redmann. He told me at 3:52 p.m. to return to his address on 2-8-02 anytime before 4:30 p.m.

IN WITNESS WHEREOF, the undersigned has executed this Affidavit on February 8, 2002.



NICOLAS CARRILLO

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No 5907

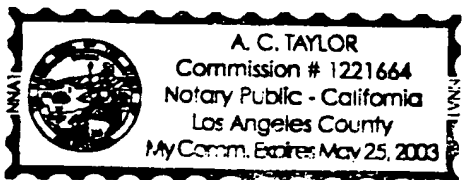
State of California

County of Los Angeles

On Feb. 8, 2002 before me, A. C. Taylor
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Nicolas Carrillo
NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

[Signature]
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☒ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL

☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER:

N/A

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

N/A

DESCRIPTION OF ATTACHED DOCUMENT

Affidavit
TITLE OR TYPE OF DOCUMENT

1
NUMBER OF PAGES

2/8/02
DATE OF DOCUMENT

N/A
SIGNER(S) OTHER THAN NAMED ABOVE

STANLEY R. JONES
LAW OFFICES
1920 MAIN STREET
SUITE 1070
IRVINE, CALIFORNIA 92614-7212
TELEPHONE (949) 475-4400
FAX (949) 852-9878

February 8, 2002

File No. 207.1
Doc. No. 20710208201

VIA FAX AND U.S. MAIL

JoAnne S. Redmann, Esq.
Crosby, Heafey, Roach & May
1901 Avenue of the Stars, Suite 700
Los Angeles, CA 90067

Re: Outland Technologies, Inc./Outland Technologies (USA), Inc.

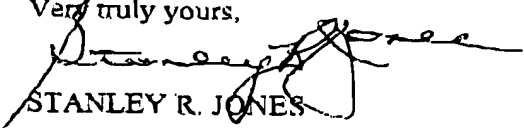
Dear Ms. Redmann:

Yesterday afternoon, I received a call from my client, James Klassen, informing me of a letter from you with enclosures which had just been delivered to him by messenger. Your letter requested that Mr. Klassen sign an enclosed patent application while the messenger waited, or let the messenger know when to return to pick up the signed application. Approximately ½ hour later, I received from you via messenger apparently the same package that was delivered to Mr. Klassen and your cover letter to me.

The direct delivery of the package to Mr. Klassen without prior notice to me certainly could be construed as a violation of the standstill agreement between our clients if not the Rules of Professional Conduct prohibiting direct contact with represented parties without the prior consent of their counsel. I realize that there was some time pressure involved, but that did not preclude prior notice to me that the package was going to be delivered to Mr. Klassen and/or assurance that I would receive the package before Mr. Klassen did. The time pressure, of course, could have been avoided just by preparing the application sooner than the day before it was due to be filed.

Mr. Klassen, as the inventor, filed the required application in his own name. Unless the settlement being discussed by the parties is consummated, Mr. Klassen has not assigned, and will not assign, the rights to the invention to Outland Technologies (USA), Inc.

Very truly yours,


STANLEY R. JONES

SRJ:mc
cc: James Klassen

THE HONORABLE THOMAS S. ZILLY

FILED ENTERED
LODGED RECEIVED

★ APR 11 2002 ★

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OUTLAND TECHNOLOGIES (USA), Inc., a)
Washington corporation; OUTLAND)
DESIGN TECHNOLOGIES, INC., a)
Washington corporation; UNICK)
INVESTMENTS, LLC, a Washington limited)
liability company; TERRY MARTIN, as)
director of Outland Technologies (USA), Inc.,)
JAMES IRELAND, as a director of Outland)
Technologies (USA) Inc., CRAIG FORHAN,)
as a director of Outland Technologies (USA),)
Inc.; STEVE FRYER, as a director of Outland)
Technologies (USA), Inc.; and JAMES)
KLASSEN, as a director of Outland)
Technologies (USA), Inc.,)

Plaintiffs,

vs.

OUTLAND TECHNOLOGIES, INC., an)
Alberta Canada corporation; TERRY)
KNIGHT; KEN BELL; and GARRY)
MIHAICHUK,)

Defendants.

NO. CV02-0229Z

**DEFENDANTS' FIRST AMENDED
ANSWER, AFFIRMATIVE DEFENSES,
AND COUNTERCLAIMS**

RECEIVED
JUL 19 2002
OFFICE OF PETITIONS

Defendants, OUTLAND TECHNOLOGIES, INC. ("Outland Canada"), TERRY
KNIGHT, KEN BELL and GARRY MIHAICHUK ("Defendants"), hereby answer and
otherwise respond to Plaintiffs' Complaint for Declaratory Judgment (the "Complaint").

ANSWER

I. PARTIES

1. Defendants admit that Outland USA is a corporation organized and existing under the laws of Washington which has qualified to do business and has done business in California at a principal place of business located at 17032 Murphy Avenue, Irvine, Orange County, California. Defendants deny that Outland USA is doing business in California any longer. Defendants deny that Outland USA does business in Lynden, Whatcom County, Washington.

2. Defendants admit that Outland Design is a corporation organized and existing under the laws of Washington. Defendants do not have sufficient information to admit or deny that Outland Design has qualified to do business in California. Defendants believe that at all times relevant hereto Outland Design was doing business in California at Outland USA's principal place of business located at 17032 Murphy Avenue, Irvine, Orange County, California. Defendants lack sufficient knowledge or information to admit or deny that Outland Design is currently doing business at 19200 Von Karman Avenue, Suite 600, Irvine, Orange County, California or that Outland Design also does business in Lynden, Whatcom County, Washington.

3. Defendants lack sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations contained in paragraph .03 of the Complaint.

4. With respect to paragraph .04 of the Complaint, Defendants admit that plaintiff Terry Martin is an individual who did reside in Orange County, California. Defendants do not know where Mr. Martin currently resides. Defendants lack sufficient knowledge and information to admit or deny the allegation that Mr. Martin was a member of the Board of Directors of Outland USA. Defendants state further that on or about November 22, 2001 Outland Canada (the sole stockholder of Outland USA) appointed a new Board of Directors for Outland USA (being the same individuals who sat on the Board of Directors for Outland Canada). This new Board of Directors (the "New Board") consisted of defendants Ken Bell, Terry Knight and Garry Mihaichuk, and plaintiffs Terry Martin and Craig Forhan. The New

1 Board suspended operations of Outland USA and Outland Canada to complete a business audit
2 by independent third parties and empowered Garry Mihaichuk, as the only "outside" director of
3 Outland Canada, with broad authority to act on the New Board's behalf to investigate the
4 operations of Outland USA. At that time, all duties of all employees--including those of Mr.
5 Martin as president of Outland USA--were suspended pending completion of the audit.
6 Defendants lack sufficient knowledge and information to admit or deny the "purposes of this
7 action."

8 5. With respect to paragraph .05 of the Complaint, Defendants lack sufficient
9 knowledge and information to admit or deny that plaintiff James Ireland is an individual residing
10 in Orange County, California. Defendants lack sufficient knowledge and information to admit or
11 deny the allegation that Mr. Ireland was a member of the Board of Directors of Outland USA.
12 Defendants lack sufficient knowledge and information to admit or deny the "purposes of this
13 action."

14 6. With respect to paragraph .06 of the Complaint, Defendants lack sufficient
15 knowledge and information to admit or deny that plaintiff Craig Forhan is an individual who
16 resides in Orange County, California. Defendants lack sufficient knowledge and information to
17 admit or deny the allegation that Mr. Forhan was a member of the Board of Directors of Outland
18 USA. Defendants lack sufficient knowledge and information to admit or deny the "purposes of
19 this action."

20 7. With respect to paragraph .07 of the Complaint, Defendants lack sufficient
21 knowledge and information to admit or deny that plaintiff Steve Fryer is an individual who
22 resides in Orange County, California. Defendants lack sufficient knowledge and information to
23 admit or deny the allegation that Mr. Fryer was a member of the Board of Directors of Outland
24 USA. Defendants lack sufficient knowledge and information to admit or deny the "purposes of
25 this action."

1 8. With respect to paragraph .08 of the Complaint, Defendants admit that plaintiff
2 James Klassen is an individual who resided in Orange County, California. Defendants do not
3 know where Mr. Klassen currently resides. Defendants deny that Mr. Klassen was ever a
4 member of the Board of Directors of either Outland USA or Outland Canada. Mr. Klassen is a
5 substantial beneficial stockholder in Outland Canada and has a fiduciary relationship with
6 Outland USA and Outland Canada by virtue of his ownership of stock in plaintiff Outland
7 Design (Outland Design is one of the major stockholders of Outland Canada) and his position as
8 inventor and Vice-President – Intellectual Property Design for Outland USA. Defendants lack
9 sufficient knowledge and information to admit or deny the “purposes of this action.”

10 9. Defendants admit that Outland Canada is a corporation organized and existing
11 under the laws of Alberta, Canada and does business in Alberta Canada. Defendants further
12 admit that Outland USA previously did business in Orange County, California but recently
13 relocated those operations to Calgary, Canada.

14 10. Defendants deny that Terry Knight is “a senior vice-president for corporate
15 compliance and securities” of Outland Canada. His correct title is Senior Vice-President and
16 Corporate Counsel of Outland Canada. Defendants admit the remaining allegations of paragraph
17 10 of the Complaint.

18 11. Defendants deny that Ken Bell is “a vice-president for Investor relations” of
19 Outland Canada. His correct title is Vice-President Corporate Development and Secretary of
20 Outland Canada. Defendants admit the remaining allegations of paragraph 11 of the Complaint.

21 12. Admitted. Defendants further affirmatively allege that Mr. Mihaichuk is
22 Chairman of the Board of Directors of Outland Canada.

23 13. Denied.

24 II. JURISDICTION/VENUE

25 14. Defendants admit that plaintiffs Outland USA and Outland Design are
Washington corporations. Defendants deny that Outland USA is doing business in Whatcom

1 County, Washington. Defendants lack sufficient knowledge or information upon which to form
2 a belief as to the truth or falsity of Plaintiffs' allegations related to Unick Investments or Outland
3 Design in paragraph 14 of the Complaint.

4 15. Denied. Defendant Outland Canada is the sole shareholder of Outland USA and
5 defendant Outland Canada claims right, title and interest in one or more bank accounts
6 maintained by Outland USA.

7 16. Defendants admit that the Superior Court of Washington for Whatcom County
8 has jurisdiction of this matter pursuant to RCW 14.12010 et seq. and RCW 7.24010 et seq.
9 However, jurisdiction is also proper in the United States District Court for the Western District
10 of Washington.

11 III. FACTS

12 17. Admitted. Outland USA is also in the business of developing, designing and
13 licensing hydraulic technology and other technology.

14 18. Defendants admit that Outland USA is a wholly owned subsidiary of Outland
15 Canada. Defendants deny the remaining allegations contained in paragraph 18 of the
16 Complaint.

17 19. Defendants deny that Unick Investments and Outland Design own 52% of the
18 voting shares of Outland Canada. Defendants admit that Mr. Knight and Mr. Bell are minority
19 shareholders in Outland Canada (although Mr. Bell is the second largest shareholder of record in
20 Outland Canada, behind Outland Design), while Mr. Mihaichuk is not an officer but is a
21 shareholder in Outland Canada. Defendants do not have sufficient information or belief to admit
22 or deny whether plaintiff Forhan controls plaintiff Unick Investments. Defendants do not have
23 sufficient information to admit or deny whether plaintiffs Martin and Klassen own 60% of and
24 control plaintiff Outland Design.

25 20. Admitted.

1 21. Denied. As stated in paragraph .4 above, on or about November 22, 2001,
2 Outland Canada (the sole stockholder of Outland USA), appointed a new Board of Directors for
3 Outland USA. The New Board consisted of defendants Ken Bell, Terry Knight and Garry
4 Mihaichuk, and plaintiffs Terry Martin and Craig Forhan--the same board members as the board
5 of directors for Outland Canada.

6 22. Admitted.

7 23. Defendants deny that plaintiffs Martin and Forhan did not have sufficient notice
8 to arrange transportation and attend the November 22, 2001 meeting. Plaintiffs Martin and
9 Forhan were served with notice of the meeting in accordance with the bylaws of Outland
10 Canada. Defendants admit that Messrs. Martin and Forhan participated in the meeting by
11 telephone.

12 24. Denied.

13 25. Admitted.

14 26. Defendants deny all allegations contained in paragraphs 26, 26.1, 26.2, and 26.3
15 of the Complaint.

16 27. Defendants admit that on or about November 23, 2001, the New Board suspended
17 operations of Outland USA in order to have independent third parties perform an audit of
18 Outland USA's operations. To ensure that books and records, capital assets and valuable
19 intellectual property of Outland USA would not be removed from the business premises during
20 the audit, security guards were posted at the premises leased by Outland USA at 17032 Murphy
21 Avenue, Irvine, California (the "Outland USA Premises"). On the afternoon of November 22,
22 2001, prior to the posting of the security guards, defendant Knight advised plaintiff Martin that
23 the guards would be posted. In addition, the locks were changed at the Outland USA Premises.
24 All employees of Outland USA, including those plaintiffs who were employees, were paid their
25 salaries but were denied access to the Outland USA Premises during the audit. Defendants deny
that these actions were taken without notice. Plaintiffs participated in the November 22, 2001

1 board meeting and had full knowledge of the suspension of business operations and changes to
2 the Board of Directors of Outland USA. There were discussions at the board meeting with
3 respect to "securing operations." In fact, there was a resolution passed by the board authorizing
4 any steps necessary in this regard. Moreover, Mr. Martin instructed Mr. Klassen to post a notice
5 outside the Outland USA Premises instructing employees not to enter until further notice. These
6 actions were necessary to ensure the integrity of the books and records, capital assets and
7 valuable intellectual property of Outland USA. Defendants deny that these actions were
8 wrongful in any way. Defendants deny the second and third sentences of paragraph .27 of the
9 Complaint.

10 28. Admitted.

11 29. Defendants admit that since November 23, 2001, the New Board has denied
12 plaintiffs unescorted access to the Outland USA Premises. Defendants deny the remaining
13 allegations contained in paragraph .29 of the Complaint.

14 30. Denied.

15 31. Denied.

16 32. Denied.

17 **IV. CAUSE OF ACTION—DECLARATORY JUDGMENT, RCW 7.24**

18 33. Defendants incorporate paragraphs 1 through 32 set forth above as their response
19 to paragraph .33 of the Complaint.

20 34. Defendants admit that a controversy exists between plaintiffs and the defendants
21 concerning their respective contractual and statutory rights and duties. Defendants deny that any
22 actions taken by defendants have been without proper corporate authority, without legal
23 authority, have been deceptive, fraudulent and oppressive, and/or have endangered the best
24 interests of Outland USA.

25 35. Defendants assert that Defendants' actions have been proper and taken with
proper legal and corporate authority, and deny any contention to the contrary.

1 36. Defendants lack sufficient knowledge or information upon which to form a belief
2 as to the truth or falsity of Plaintiffs' desires and therefore deny the allegations contained in
3 paragraph .36 of the Complaint.

4 37. Defendants lack sufficient knowledge or information upon which to form a belief
5 as to the truth or falsity of Plaintiffs' desires and therefore deny the allegations contained in
6 paragraph .37 of the Complaint.

7 38. Defendants lack sufficient knowledge or information upon which to form a belief
8 as to the truth or falsity of Plaintiffs' desires and therefore deny the allegations contained in
9 paragraph .38 of the Complaint.

10 39. Defendants deny that a judicial declaration is necessary and appropriate.
11 Defendants affirmatively state that plaintiffs commenced a similar action on or about November
12 27, 2001, *Outland Technologies (USA), Inc. v. Outland Technologies (Canada), Inc.*, Case No.
13 CV-01-1028MMM, asking the California court to grant to plaintiffs substantially the same
14 equitable relief now requested in the Complaint. Thereafter, the plaintiffs filed an action in the
15 Court of Queen's Bench, judicial district of Calgary, Alberta, In the Matter of Outland
16 Technologies, Inc., Action No. .0101-21883, requesting substantially the same relief as requested
17 in the California action. Plaintiffs then dismissed the California action. The Canadian court
18 dismissed plaintiffs' request for equitable relief and required only that the Outland Canada board
19 meet to address the reopening of the Outland USA Premises. That meeting took place, and no
20 other request for equitable relief is currently pending in the Canadian action. Thereafter,
21 plaintiffs filed this action requesting substantially the same relief as requested in the California
22 action and the Canadian action. As the Canadian court has already considered plaintiffs' request,
23 defendants deny that another judicial declaration is now necessary or appropriate and urge this
24 Court to deny the Plaintiffs' request.
25

1 **SEPARATE AND AFFIRMATIVE DEFENSES**

2 Defendants assert the following affirmative defenses to the claims for relief set
3 forth in the Complaint:

4 40. Defendants deny each and every allegation, averment, conclusion of law, and
5 other statement not specifically admitted in this Answer.

6 41. Plaintiffs' Complaint fails to state any claim upon which relief may be granted.

7 42. Proper notice was provided to plaintiffs of the meeting of the members of the
8 Board of Directors of Outland USA held on November 22, 2001 and at all times thereafter.

9 43. The New Board was within its corporate and legal rights when it took possession
10 of the Outland USA Premises, changed the locks, posted guards, and prevented its employees,
11 including certain of the Plaintiffs, from accessing the Outland USA Premises without an escort.

12 44. At all times, Defendants acted within their corporate and legal authority.

13 45. All action taken by defendants was proper and in accordance with the business
14 judgment rule.

15 **COUNTERCLAIMS**

16 Defendant, Outland Technologies, Inc., asserts the following counterclaims
17 against Plaintiffs Martin, Klassen, Forhan and Outland Design:

18 **I. GENERAL ALLEGATIONS**

19 1. Plaintiff and Counterclaim defendant James Klassen, an inventor, and his cousin,
20 Plaintiff and Counterclaim defendant Terry Martin, formed T&J Enterprises, a general
21 partnership in the mid-1990s to use Klassen's unique ability to invent new and useful patentable
22 inventions. Thereafter, Klassen and Martin created a second business entity, Outland Design, for
23 that same purpose. At least 70% of the outstanding stock of Outland Design was owned by T&J
24 Enterprises until Martin and Klassen brought in additional investors in August of 1998. At that
25

1 time, T&J Enterprises retained control of Outland Design by maintaining more than 60% of the
2 outstanding stock of Outland Design.

3 2. Outland Design was and is a technical design and development company
4 managed by Martin and Klassen, with Klassen serving as its employee/inventor. Klassen is a
5 Canadian citizen. He obtained a visa to work in the United States through Outland Design. Both
6 Klassen and Martin are members of Outland Design's board of directors.

7 3. One of Klassen's inventions is a rotary positive displacement device and related
8 technology (the "CvR™ Technology") for use with hydraulic and other technologies. The
9 CvR™ Technology has potential application as a rotary positive displacement engine and is
10 potentially capable of being used with different types of fluids as an engine or a positive
11 displacement pump.

12 4. A patent application was filed for the CvR™ Technology on March 9, 1995 on
13 behalf of Outland Design. The patent applications for Klassen's other patentable inventions were
14 filed in the name of Outland Design, and later, Outland USA.

15 5. Beginning with the formation of T&J Enterprises, Klassen and Martin looked for
16 funding to commercialize the CvR™ Technology and other technologies invented by Klassen.
17 To that end, in a letter agreement dated February 26, 1997 (the "EcoTech Agreement"), Outland
18 Design (i.e., Martin and Klassen) and a group of Canadian individuals organized as EcoTech
19 Canada Ltd. ("EcoTech"), agreed to establish a new company – Outland Hydraulics, Inc.—later
20 renamed Outland USA. The EcoTech Agreement provided that EcoTech would form a new
21 Alberta holding company (the "Canadian Holding Company") to purchase 50% of the shares of
22 Outland USA for US \$300,000.

23 6. As part of the EcoTech Agreement, the remaining 50% of the stock of Outland
24 USA was issued to Outland Design (i.e., Martin and Klassen) in exchange for Outland Design's
25 agreement (a) to assign the CvR™ Technology to Outland USA; and, (b) that all existing and
future inventions and technology in the area of hydraulic technologies developed by Outland

1 Design (i.e., Klassen) are owned by Outland USA. Under the EcoTech Agreement, Outland
2 USA also had the right of first refusal to any other inventions and technologies developed by
3 Outland Design outside the area of hydraulic technologies.

4 7. As provided in the EcoTech Agreement, Outland Design (i.e., Klassen and
5 Martin) and the Canadian Holding Company were issued the stock of Outland USA. Outland
6 USA began operations to commercialize the inventions and technologies of Klassen (particularly
7 in the area of hydraulic technologies) assigned to it by operation of the EcoTech Agreement.

8 8. From the beginning, Outland USA was run by Martin as president and chief
9 executive officer. Martin was also the chairman of the board of directors for Outland USA.
10 Klassen continued to be paid as an employee/inventor of Outland Design because he was a
11 Canadian citizen, and it was feared by Martin that a change in his employment status would
12 negatively impact his U.S. work visa.

13 9. Outland Canada was subsequently formed to market and license the Outland USA
14 technology. Outland Canada received a worldwide license from Outland USA to commercialize
15 the CvR™ technology. Outland Canada was to be located in Alberta, Canada and was to be
16 owned by the same shareholders, with the same ratios, as Outland USA. Accordingly, Outland
17 Design (i.e., Klassen and Martin) was issued 50% of the Outland Canada stock, and the
18 Canadian Holding Company was issued the remaining 50%.

19 10. Initially, Brian Webb was the president of Outland Canada. Webb was also the
20 chairman of the board of directors for Outland Canada. On April 20, 2000, Mr. Webb resigned
21 as president and was appointed chief operating officer. At that time, Martin was appointed
22 president and chief executive officer of Outland Canada. He was also president and chief
23 executive officer of Outland USA.

24 11. To fund the development and commercialization efforts of Outland USA, Martin
25 and Klassen recognized that they needed to continue to raise money. Martin and Klassen
brought in a new and dynamic Canadian management team (the "Canadian Management", which

1 initially consisted of Ken Bell and subsequently included Terry Knight and Garry Mihaichuk) to
2 Outland Canada, who began raising money through contacts with Canadian investors.

3 12. With the Canadian Management, new directors replaced the previous Canadian
4 directors and the ownership ratio of Outland Canada stock changed (with the issuance of
5 additional stock), so that Martin and Klassen, through Outland Design, now owned slightly less
6 than 50% of the outstanding stock of Outland Canada.

7 13. The Canadian Management recognized and relied upon the substantial value in
8 the inventions and technology owned or to be owned by Outland USA and Klassen's unique role
9 as a substantial beneficial stockholder and employee/inventor for Outland USA.

10 14. As it was anticipated that at some point in the future Outland Canada would go
11 public, it was decided that it was in the best interests of Outland Canada for Outland Canada to
12 own Outland USA. As such, Outland USA was purchased by Outland Canada, and in effect
13 provided approximately \$5 million US in funds to the founding shareholders (\$2.5 million to
14 Outland Design and \$2.5 million to the Canadian Holding Company). Martin remained the
15 chairman of the board of directors for both companies.

16 15. From April, 2000 through May, 2001, the Canadian Management raised more
17 than \$15 million for Outland Canada. These funds were deposited with Outland Canada and
18 then distributed directly to Outland USA by Outland Canada on an as-needed basis, with the
19 need determined by Martin and Klassen, and their Outland USA management, including plaintiff
20 and Counterclaim defendant Craig Forhan, who was the chief financial officer of Outland USA.

21 1. Klassen continued to be the driving inventive and technical force behind Outland
22 USA. Outland Canada continued to be the administrative, marketing and funding vehicle for
23 Outland USA. To avoid visa problems, Klassen continued to be paid through Outland Design
24 (which was co-located with Outland USA, first in Lynden, Washington, and later in Irvine,
25 California). Customarily, operating funds were transferred from Outland Canada into the
account of Outland USA to pay business expenses. For Klassen, funds were transferred from

1 Outland USA to Outland Design. Martin and Klassen did not disclose to the Canadian
2 Management that Klassen was not being paid as a regular employee of Outland USA.

3 16. Under the EcoTech Agreement, while being paid from the funds transferred from
4 Outland Canada to Outland Design, Klassen invented (a) improvements to the CvR™
5 Technology; and (b) a related hydraulic technology called the "D-2 Technology."

6 17. The Canadian Management was told about the improvements to the CvR™
7 Technology; however, initially Martin and Klassen deliberately concealed and kept hidden both
8 the D-2 Technology and the EcoTech Agreement from the Canadian Management.

9 18. The Canadian Management was not aware that the ownership of the D-2
10 Technology vested in Outland USA by operation of the EcoTech Agreement. Martin told the
11 Canadian Management that Klassen worked for Outland USA (and it was this employee
12 relationship that was believed to vest title to the D-2 Technology in Outland USA) and the
13 Canadian Management had no reason to believe otherwise. Martin created an organization chart
14 for Outland USA that showed that both he and Klassen were Outland USA employees.

15 19. When the D-2 Technology was finally disclosed to the Canadian Management by
16 Martin in late 2000, he denied (a) that the D-2 Technology was owned by Outland USA; and (b)
17 that the D-2 Technology was related to or competitive with the CvR™ Technology, or was
18 related to hydraulic technology. In fact, the D-2 Technology was and is owned by Outland USA
19 as provided for by the EcoTech Agreement, and by Klassen's relationship with Outland USA and
20 Outland Canada. Further, as Klassen confirmed, the D-2 Technology is hydraulic technology
21 and is competitive with the CvR™ Technology. Martin also failed to disclose that the D-2
22 Technology is competitive with the CvR™ Technology in any of the offering memoranda for
23 Outland Canada investors.

24 20. Instead, Martin claimed that the D-2 Technology was not owned by Outland
25 USA. Martin never disclosed the existence of the EcoTech Agreement to the Canadian
Management. Martin denied that Klassen was an employee of Outland USA, and ignored his

1 and Klassen's fiduciary relationship to Outland USA and Outland Canada. Martin maintained
2 that Outland USA had no right to the D-2 Technology. Martin deliberately misled the Canadian
3 Management into believing Outland Design (and he and Klassen) owned the D-2 Technology
4 and that if Outland USA and/or Outland Canada did not buy the D-2 Technology from Outland
5 Design (i.e., Klassen and Martin), that it would be sold elsewhere.

6 21. Martin and Klassen caused a provisional patent application for the D-2
7 Technology to be filed by the patent attorney for Outland USA at the U.S. Patent and Trademark
8 Office on February 8, 2001 in Klassen's name alone. This patent application was not disclosed
9 to the Canadian Management.

10 22. On January 24, 2001, Martin represented to the board of directors of Outland
11 Canada that the board needed to enter into a new agreement with Martin to acquire all present
12 and future inventions created by Klassen. Subsequently, Martin told the Canadian Management
13 that Klassen did not work for Outland USA (and claimed that Klassen was an employee/inventor
14 for Outland Design), and demanded that Outland Canada pay him and Klassen additional money
15 for the D-2 Technology or they would leave and take the D-2 Technology with them. It was at
16 this point that Martin tried to sell the D-2 Technology (which was already owned by Outland
17 USA) to Outland USA for approximately \$1.7 million.

18 23. Through his misrepresentations and concealment of the EcoTech Agreement,
19 Martin was able to induce the board of directors of Outland Canada to agree to employment
20 contracts between Outland USA and himself, Klassen and Forhan. Partial consideration for the
21 substantial compensation agreed to by the board of directors of Outland Canada was that Outland
22 USA would thereby be able to purchase Outland Design. The Canadian Management
23 misguidedly believed, through the actions and misrepresentations of Martin and Klassen, that
24 only through the acquisition of Outland Design, thus it becoming part of Outland USA, could
25 Outland USA thereby own the D-2 Technology.

1 24. In April 2001, an employment agreement was finally executed with Klassen. It
2 had an effective date in February 2001. The agreement to sell Outland Design to Outland USA
3 was a substantial part of the consideration for Klassen's compensation. In this manner, Outland
4 Canada believed that it would acquire all of the rights to the D-2 Technology either from Outland
5 Design or from Klassen individually.

6 25. Martin signed the employment agreement between Outland USA and Klassen on
7 behalf of Outland USA. He did not tell the Canadian Management that he and Klassen added a
8 rider to the employment agreement that allowed Klassen to retain any rights Klassen had in the
9 D-2 Technology; the rider stated that Klassen's transfer of the D-2 Technology was not part of
10 the employment agreement.

11 26. To date, Martin and Klassen have not transferred or sold Outland Design to
12 Outland USA.

13 27. Beginning in early 2001, the Canadian Management became increasingly
14 concerned about the past and ongoing conduct of Martin, Klassen, Forhan, Michael Lancaster
15 (vice president and general counsel for Outland USA) and others associated with them, as it
16 related to the interests of the shareholders of Outland Canada and the interests of Outland
17 Canada, the sole shareholder of Outland USA. These concerns were shared by more than 100
18 shareholders and special warrant holders of Outland Canada.

19 28. In late 2001, a former director of Outland Canada disclosed the EcoTech
20 Agreement to Canadian Management for the first time.

21 29. The Canadian Management thus discovered that Martin and Klassen, Outland
22 Design and Outland USA management, were offering for sale to Outland USA, technology (the
23 D-2 Technology) that Outland USA already owned--in order to fraudulently obtain additional
24 money for themselves from their Canadian investors.

25 30. Due to the aforementioned concerns and events, a meeting of the board of
directors of Outland Canada was duly noticed to be held, and was held, on November 22, 2001.

1 31. Martin and Forhan were served with notice of the board of directors meeting in
2 accordance with the bylaws of Outland Canada and participated by telephone.

3 32. During the November 22, 2001 meeting, a letter from the shareholders and special
4 warrant holders of Outland Canada was read word-for-word to Martin. Holders of special
5 warrants had paid market value for such securities and were entitled to automatically receive
6 common shares of Outland Canada by simply exercising their conversion rights, at no additional
7 cost to them. The letter provided, in relevant part, that the shareholders and special warrant
8 holders were extremely concerned and were dissatisfied with the present executive officers and
9 management of the company, particularly Martin. Martin was advised at that time that the letter
10 had been signed by more than one hundred common shareholders and special warrant holders,
11 who controlled what appeared to be a majority of the common shares of Outland Canada
12 (assuming the exercise of the special warrants into common shares by those special warrant
13 holders who had signed the letter). The board then resolved to take any and all necessary steps
14 to suspend management and operations of Outland Canada and Outland USA and to conduct a
15 review of current management and operations.

16 33. A new board was appointed for Outland USA, the new board consisting of the
17 members of the board for Outland Canada (the parent company): Martin, Forhan, Mihaichuk,
18 Bell and Knight (the "New Board").

19 34. Under the direction of the New Board, the operation of Outland USA was
20 suspended until an audit by independent third parties could be performed. To ensure the
21 integrity of the books and records, capital assets, and intellectual property, during the audit
22 period, security guards were posted and the locks were changed at the Outland USA Premises.

23 35. On February 13, 2002, a meeting of the shareholders of Outland Canada was held
24 and, of the 37,856,713 issued and outstanding shares of Outland Canada, holders of
25 approximately 35,765,948 shares representing approximately 94% were present in person or by
proxy, including all shares held by the plaintiffs. The aforementioned shares were voted in favor

1 of, among other things, the unanimous approval of a new board of directors of Outland Canada,
2 which included defendants Knight, Bell and Mihaichuk but excluded defendants Martin and
3 Forhan.

4 36. In addition to their improper actions related to the D-2 Technology ownership,
5 Martin and Klassen engaged in other activities that were harmful to, or not in the best interest of
6 Outland USA and/or Outland Canada.

7 37. Despite their obligations to Outland Canada and Outland USA, Martin and
8 Klassen engaged in acts or conduct that resulted in conflicts of interest and/or self-dealing,
9 including, but not limited to:

10 A. Martin and Klassen held interests in Outland USA's potential
11 manufacturing and distribution strategic partners, thereby tainting the decision-
12 making process with respect to engaging in relationships with such entities.
13 Martin set up these strategic relationships to divest Outland USA of its intellectual
14 property rights and move those rights to other entities not owned or controlled by
15 Outland Canada or Outland USA.

16 B. Martin and Klassen caused to be formed a trust (owned by them and their
17 Outland USA management)--the D2 Energy Systems Trust--with the expectation
18 that if Outland USA did not "buy" the D-2 Technology, it would be transferred to
19 the D2 Energy Systems Trust. In the event that Outland USA did "purchase" the
20 D-2 Technology, Martin and Klassen and their Outland USA management
21 intended to exclusively license the D-2 Technology to the D2 Energy Systems
22 Trust for a nominal royalty, thereby moving the economic benefit of the D-2
23 Technology from Outland USA to the D2 Energy Systems Trust. In either event,
24 the value of the D-2 Technology would be removed from Outland USA to the
25 benefit of Martin and Klassen.

1 C. Martin negotiated and approved contracts and transactions between
2 Outland USA and Outland Design. Martin and Klassen operated Outland Design
3 from the Outland USA facility without any division (or differentiation) between
4 the entities other than during the times that funds were transferred from Outland
5 USA's accounts to Outland Design's accounts for the payment of various items,
6 e.g., Outland USA issued a \$5,400 check to Outland Design for software that
7 Outland Design purchased for \$2,700, Outland USA transferred funds to pay
8 Klassen's compensation, and Outland USA paid more than \$150,000 to Outland
9 Design for undocumented services.
10

11 D. Confidential information about Outland USA's business partners was used
12 to buy stock in these companies.

13 38. In addition to engaging in conduct resulting in conflicts of interest or self-dealing,
14 Martin and Klassen also misappropriated Outland USA funds and property by engaging in the
15 acts or conduct set forth below:

16 A. As noted above, Martin and Klassen hid the invention of the D-2
17 Technology from Outland Canada and caused patent counsel for Outland USA to
18 file a provisional patent application for the D-2 Technology in Klassen's name,
19 rather than in Outland USA's name. Martin deceived Outland Canada and its
20 management about Outland USA's ownership of the D-2 Technology and claimed
21 the D-2 Technology belonged to Klassen and/or Outland Design. Martin and
22 Klassen then attempted to arrange a sale of the D-2 Technology from Outland
23 Design and/or Klassen to Outland USA.
24

25 B. In addition, on an ongoing basis, Outland Canada transferred funds to
Outland USA, which then transferred funds to Outland Design partially to pay

1 Klassen's compensation. Initially, Martin represented that this was done to be
2 consistent with Klassen's immigration filings. However, this transfer procedure
3 continued even after Klassen was deemed an employee of Outland USA.

4 C. Martin authorized Michael J. Lancaster, former attorney for Outland USA,
5 to receive \$800,000 from Outland USA and deposit it in Lancaster's separate
6 attorney trust account without the Outland USA board's approval, and in violation
7 of the board's suspension of the operations of the company.

8 D. Martin failed to implement (and/or failed to instruct his officers and
9 employees to implement and maintain) proper internal control procedures with
10 respect to the security of corporate assets. This resulted in, among other things,
11 company checks being written for large amounts of money without proper
12 documentation, unsecured signed blank checks, and confidential business
13 information in unlocked files..

14 E. Martin's wife was given Outland USA check signing authority even
15 though she was not an officer, director or employee of Outland USA.

16 F. Martin allowed the use of corporate funds for personal items.

17 G. Martin allowed the company to loan funds to an unrelated company.

18 H. Martin regularly co-mingled the funds of Outland Design and Outland
19 USA.

20
21
22 39. Martin and Klassen failed to act in the "best interests" of Outland USA and
23 Outland Canada by engaging in or permitting certain acts or conduct, including, but not limited
24 to:

25 A. Martin and Klassen kept Klassen on the books and records as an Outland
Design employee, although Martin represented that he and Klassen were Outland

1 USA employees. No inventorship agreement was executed between Klassen and
2 Outland Design or Outland USA with respect to intellectual property invented or
3 developed by Klassen. This was done to provide Klassen with the opportunity to
4 claim a proprietary interest in any intellectual property he generated. In fact, in
5 February 2001, Martin and Klassen caused the provisional patent application for
6 the D-2 Technology to be filed under Klassen's name, rather than Outland USA's
7 name.

8
9 B. Martin was uncooperative and instructed others to follow his lead. For
10 example, during Deloitte & Touche LLP's audit of the Outland USA business, he
11 would not cooperate and instructed others to not to cooperate, thereby delaying
12 Deloitte & Touche LLP's review and extending the period of time in which
13 Outland USA had to suspend its operations.

14 C. Martin failed to communicate with shareholders and other directors and
15 officers of Outland USA regarding the finances of Outland USA. Outland
16 Canada is informed and believes, and thereupon alleges, that Martin failed to
17 inform the shareholders and others about the current "burn rate," and about
18 questionable expenditures that Martin authorized, keeping them in the dark about
19 the level of cash that Outland USA had left to run its operations. For example,
20 Martin authorized a \$50,000 loan from Outland USA to Outland Sports, Inc., an
21 unrelated company in which Martin had an interest.

22
23 D. Weatherford Artificial Lift Systems, Inc. ("Weatherford") has a license
24 agreement with Outland Canada to utilize the CvR™ Technology for certain
25 applications in the oil and gas industry. Minimum royalty payments were due to
begin this year under that license agreement. Based on conversations with

1 Weatherford, Weatherford has informed Outland Canada that they do not intend
2 to advance those payments because the commercialization of the CvR™
3 Technology has been delayed. Outland Canada is of the view that this delay has
4 solely been caused by the actions of Martin and Klassen. Outland Canada will
5 thus suffer the economic loss of minimum payments as well as the economic loss
6 from the delay of commercialization.

7 40. As to all claims for relief, Outland Canada asserts that California law applies as
8 California is the state with the most significant contacts.

9 II. FIRST CLAIM FOR RELIEF

10 (Breach of Fiduciary Duty against Martin and Klassen)

11 41. Outland Canada incorporates by reference paragraphs 1 through 41 set forth
12 above.

13 42. As an officer and director, Martin worked at Outland USA in a position of trust
14 and confidence. Martin had a fiduciary duty to act in the best interests of Outland USA and its
15 sole shareholder, Outland Canada.

16 43. As an employee/inventor for Outland Design and Outland USA, Klassen worked
17 in a position of trust and confidence. He was and is a beneficial and substantial stockholder in
18 Outland USA, and a director and substantial stockholder in Outland Design. Klassen had a
19 fiduciary duty to act in the best interests of Outland USA and its sole shareholder, Outland
20 Canada.

21 44. Martin and Klassen breached their fiduciary duties by engaging in conduct that
22 resulted in conflicts of interest, self-dealing, and misappropriation of funds and property.

23 45. As a proximate result of Martin's and Klassen's breaches of their fiduciary duties,
24 Outland Canada has suffered damages in an amount to be determined at trial.
25

1 46. Further, in breaching their fiduciary duties as described above, Martin and
2 Klassen are guilty of malice and/or oppression thereby warranting an award of punitive damages
3 in an amount appropriate to punish him and deter others from engaging in similar misconduct.

4 **III. SECOND CLAIM FOR RELIEF**

5 (Violation of California Civil Code §§ 3426 et seq.
6 Misappropriation of Trade Secrets by Martin and Klassen)

7 47. Outland Canada incorporates by reference paragraphs 1 through 47 set forth
8 above.

9 48. Outland Canada, as sole shareholder of Outland USA, owns trade secrets
10 regarding and related to the D-2 Technology, the CvR™ Technology and other proprietary and
11 confidential information ("Outland USA Confidential Information").

12 49. Outland Canada and Outland USA made reasonable efforts to ensure that Outland
13 USA Confidential Information remained secrets by disclosing them only to those persons who
14 need to know, and who had agreed to keep the information a secret, and requiring those
15 individuals to promise not to disclose any information relating to Outland USA Confidential
16 Information. Martin and Klassen were individuals to whom Outland USA Confidential
17 Information was disclosed.

18 50. Outland USA Confidential Information falls within the retained definition of trade
19 secrets pursuant to Cal. Civil Code § 3426.1, including that it contains information that derives
20 economic value, actual or potential, from not being generally known, and not being readily
21 ascertainable by proper means by other persons.

22 51. Martin and Klassen misappropriated the above-described trade secrets and
23 Outland USA Confidential Information by disclosing this information to entities with which
24 Counterclaim defendants are affiliated and by attempting to use, and using it, for their own
25 purposes.

1 52. As a result of unlawful acts by Martin and Klassen, Outland Canada will suffer
2 great and irreparable harm and damage, the precise nature and amount of which will be difficult
3 to ascertain, thereby leaving Outland Canada without an adequate remedy at law.

4 53. Outland Canada is entitled to injunctive relief restraining Martin and Klassen, and
5 all persons acting in concert with them, from engaging in such further unlawful acts and from
6 reaping any additional commercial advantage from their misappropriation of Outland USA's
7 Confidential Information and trade secrets. Outland Canada is also entitled to an injunction
8 requiring Martin and Klassen to immediately turn over all trade secret information in their
9 possession. In addition, Outland Canada is entitled to an injunction ordering Martin and Klassen
10 to identify every person and entity that received any trade secret information from them.

11 54. Outland Canada is further entitled to recover from Martin and Klassen the
12 damages that Outland Canada has sustained as result of their wrongful acts. As a proximate
13 result of Martin's and Klassen's misappropriation of Outland USA's Confidential Information
14 and trade secrets, Outland Canada suffered damages and Martin and Klassen were unjustly
15 enriched. The amount of such damages cannot be determined at this time, but is in excess of the
16 jurisdictional amount.

17 55. Outland Canada is informed and believes and therefore alleges that the acts of
18 misappropriation of trade secrets by Martin and Klassen were willful and malicious. Therefore,
19 under California Civil Code § 3426.3, Outland Canada is entitled to recover exemplary damages
20 from Martin and Klassen in an amount sufficient to punish them and deter others from engaging
21 in similar conduct.

22 56. Outland Canada is informed and believes and therefore alleges that the acts of
23 misappropriation of trade secrets by Martin and Klassen were willful and malicious. Therefore,
24 under California Civil Code § 3426.4, Outland Canada is entitled to reasonable attorneys' fees
25 incurred in litigating this action.

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IV. THIRD CLAIM FOR RELIEF

(Misappropriation of Trade Secret - California Common Law - by Martin and Klassen)

57. Plaintiff incorporates herein and reallege, as if fully set forth in this paragraph, the allegations contained in Paragraph Nos. 1 through 57 above.

58. Outland Canada, as sole shareholder of Outland USA, owns trade secrets regarding and related to the D-2 Technology, the CvR™ Technology and other proprietary and confidential information.

59. Outland Canada and Outland USA made reasonable efforts to ensure that its trade secrets remained so by disclosing the secrets only to those persons who need to know, and who had agreed to keep the information a secret, and requiring those individuals to promise not to disclose any information relating to such trade secrets.

60. The CvR™ Technology, the D-2 Technology and the other proprietary and confidential information that Martin and Klassen have unlawfully acquired and retained constitute trade secrets and contain information that derives economic value, actual or potential, from not being generally known, and not being readily ascertainable by proper means by other persons.

61. Martin and Klassen misappropriated the above-described trade secrets related to the D-2 Technology by disclosing this information to entities with which Counterclaim defendants are affiliated.

62. As a proximate result of the misappropriation of the D-2 Technology trade secret, Outland Canada has suffered actual damages in an amount to be determined at trial. As a further proximate result of the misappropriation, Defendants were unjustly enriched in an amount to be determined at trial.

63. Outland Canada is informed and believes that the aforementioned acts of Martin and Klassen were willful and malicious, entitling Outland Canada to recover punitive damages pursuant to California Civil Code Section 3294.

1 **V. FOURTH CLAIM FOR RELIEF**

2 (Conversion against Martin, Klassen, and Outland Design)

3 64. Outland Canada incorporates by reference paragraphs 1 through 64 set forth
4 above.

5 65. Outland USA and its sole shareholder, Outland Canada, have equitable title, own
6 and are entitled to legal title of the D-2 Technology.

7 66. Martin and Klassen and/or Outland Design have claimed Klassen's and/or
8 Outland Design's ownership of the D-2 Technology and continue to wrongfully assert ownership
9 of the D-2 Technology. Outland Canada is informed and believes and therefore alleges that
10 Klassen has filed his own nonprovisional patent application for the D-2 Technology, claiming it
11 as his own. Klassen's prosecution of a separate patent application for the D-2 Technology will
12 cause substantial and irreparable harm to Outland Canada unless Klassen is immediately
13 enjoined from such prosecution.

14 67. Between the time of Martin's, Klassen's and/or Outland Design's conversion of the
15 D-2 Technology and the filing of this action, Outland Canada has been forced to expend time
16 and money in pursuit of its legal title to the D-2 Technology, all to Outland Canada's further
17 damage.

18 68. Martin's, Klassen's and/or Outland Design's actions were willful, wanton,
19 malicious and oppressive and justify an award of exemplary and punitive damages.

20 **VI. FIFTH CLAIM FOR RELIEF**

21 (Constructive Fraud against Martin, Klassen and Forhan)

22 69. Outland Canada incorporates by reference paragraph 1 through 69 set forth above.

23 70. By virtue of the relationship between Outland Canada (as sole shareholder of
24 Outland USA) and Martin, Klassen and Outland Design, these Counterclaim defendants owe
25 Outland Canada a fiduciary duty, and by virtue of Outland Canada having placed confidence in
the fidelity and integrity of Martin, Klassen, and Forhan to operate and by virtue of entrusting

1 Martin and Klassen with authority to operate the Outland USA business in the best interests and
2 for the benefit of Outland Canada and Outland USA, a confidential relationship existed at all
3 times mentioned between Outland Canada and Counterclaim defendants.

4 71. Martin, Klassen and Forhan accepted the trust and confidence placed in them with
5 the intent to deceive and defraud Outland Canada and its investors. Martin, Klassen and Forhan
6 did this with the intent to induce reliance by Outland Canada in the continuing fidelity of Martin,
7 Klassen and Forhan who were entrusted with acting in the best interests of Outland USA.

8 72. Despite having voluntarily accepted the trust and confidence reposed in them,
9 Martin, Klassen and Forhan abused the trust and confidence of Outland Canada by disbursing
10 funds and transferring property owned by Outland and Outland USA to themselves and others
11 for non-business-related purposes, and by conducting business at Outland USA's facilities for
12 their own benefit or the benefit of other companies controlled by or of interest to them.

13 73. Martin and Klassen abused the trust and confidence of Outland Canada and its
14 investors through their concealment of the invention of the D-2 Technology from Outland
15 Canada, and their refusal to transfer legal title, although Outland USA holds equitable title with
16 Klassen as the holder of legal title in trust for Outland USA. Further, Martin and Klassen
17 permitted Klassen or others to wrongfully claim ownership of the D-2 Technology.

18 74. Martin and Klassen further kept Klassen on the books and records as an Outland
19 Design employee--even though Klassen was compensated with funds from Outland Canada and
20 Outland USA--and no inventorship agreement was executed between Klassen and Outland USA
21 with respect to intellectual property invented or developed by Klassen, so that Klassen, under
22 Martin's direction, could fraudulently claim a proprietary interest in technology he invented
23 while working for Outland USA as an employee/inventor. And, when an agreement regarding an
24 employment agreement was finally reached, Martin and Klassen removed the consideration for
25 the agreement--the transfer of the D-2 Technology.

1 75. Outland Canada reasonably relied on Martin, Klassen and Forhan in light of their
2 own representations of fidelity and their acceptance of their positions of trust and confidence.
3 Outland Canada learned its confidence in reliance upon Martin, Klassen and Forhan was
4 misplaced when Outland Canada discovered that Martin, Klassen and Forhan disbursed funds
5 and fraudulently claimed property belonging to Outland Canada and Outland USA to the
6 personal benefit of themselves or others.

7 76. As a result of the fraud of Martin, Klassen and Forhan as herein alleged, Outland
8 Canada has been damaged in an amount to be determined at trial.

9 77. In committing the fraud described above, Martin, Klassen and Forhan are guilty
10 of malice, fraud, and/or oppression thereby warranting an award of punitive damages in an
11 amount appropriate to punish Martin, Klassen and Forhan, and deter others from engaging in
12 similar misconduct.

13 **VII. SIXTH CLAIM FOR RELIEF**

14 (Fraud against Martin and Klassen)

15 78. Outland Canada incorporates by reference paragraphs 1 through 78 set forth
16 above.

17 79. Martin and Klassen have claimed that the D-2 Technology belongs to Klassen
18 and/or Outland Design. Further, Martin and Klassen attempted to arrange a sale of the D-2
19 Technology from Outland Design and/or Klassen to Outland USA. In fact, three employment
20 agreements were executed with consideration being the sale of Outland Design and the transfer
21 of the D-2 Technology to Outland Canada and Outland USA.

22 80. By representing that Klassen and/or Outland Design owned the D-2 Technology,
23 Martin and Klassen acted with the intent to induce reliance by Outland Canada to fund and
24 approve Outland USA's entering into employment agreements with Martin, Klassen, and Forhan.
25 Further, Martin approved the carve-out of the D-2 Technology transfer to Outland USA in the
proposed employment agreement with Klassen.

1 81. Martin and Klassen undertook these actions with the intent to deceive and defraud
2 Outland Canada.

3 82. Outland Canada reasonably relied upon Martin's and Klassen's representation by
4 agreeing to enter into employment agreements with Martin, Klassen and Forhan in exchange for
5 the sale of Outland Design (and the D2 Technology). Outland has since discovered the true
6 facts--that Outland Canada and Outland USA already owned the D-2 Technology.

7 83. As a result of the fraud of Martin and Klassen, Outland Canada has been damaged
8 in an amount to be determined at trial.

9 84. In committing the fraud described above, Martin and Klassen are guilty of malice,
10 fraud, and/or oppression thereby warranting an award of punitive damages in an amount
11 appropriate to punish Martin and Klassen, and deter others from engaging in similar misconduct.

12 **VIII. SEVENTH CLAIM FOR RELIEF**

13 (Violation of California Labor Code §§ 2860 & 2863 By Martin, Klassen and Forhan)

14 85. Outland Canada incorporates by reference paragraphs 1 through 85 set forth
15 above.

16 86. The conduct of Martin, Klassen and Forhan violates California Labor Code
17 § 2860, which provides that everything an employee acquires by virtue of his employment,
18 except the compensation due to him by his employer, belongs to the employer. In addition, the
19 conduct of Martin, Klassen and Forhan violates California Labor Code § 2863, which provides
20 that an employee who has any business to transact on his own account, similar to that entrusted
21 to him by his employer, shall always give the preference to the business of the employer.

22 87. As a direct and proximate result of Martin's, Klassen's and Forhan's conduct,
23 Martin, Klassen and Forhan received and continue to hold work product and information
24 belonging to Outland Canada and Outland USA, as well as monetary gain as a result of their
25 failure to act in the best interests of Outland Canada and Outland USA.

1 88. In committing the acts described above, Martin, Klassen and Forhan are guilty of
2 malice, fraud, and/or oppression thereby warranting an award of punitive damages in an amount
3 appropriate to punish Martin, Klassen and Forhan, and deter others from engaging in similar
4 misconduct.

5 **IX. EIGHTH CLAIM FOR RELIEF**

6 (Unfair Competition By Martin, Klassen, and Forhan – Cal. Bus. & Prof. Code §17200)

7 89. Outland Canada incorporates by reference paragraphs 1 through 89 set forth
8 above.

9 90. Martin, Klassen and Forhan misappropriated trade secrets, money, labor and
10 opportunities away from Outland Canada and Outland USA and to themselves and others.

11 91. These acts violate California Labor Code §§ 2860 and 2863, and therefore,
12 constitute unlawful business acts or practices within the meaning of California Business and
13 Professions Code § 17200.

14 92. As a direct and proximate result of the aforementioned acts, Martin, Klassen and
15 Forhan received and continue to hold work product and information belonging to Outland
16 Canada and Outland USA, as well as monetary gain as a result of their unlawful acts and
17 business practices.

18 93. Outland Canada has taken upon itself enforcement of the claim alleged herein.
19 There is a financial burden incurred in pursuing this claim, and it would be against the interests
20 of justice to penalize Outland Canada by forcing it to pay attorneys' fees from the recovery on
21 this claim. Therefore, an award of attorneys' fees is appropriate pursuant to California Code of
22 Civil Procedure § 1021.5.

23 **X. NINTH CLAIM FOR RELIEF**

24 (Declaratory Relief against Martin and Klassen)

25 94. Outland Canada incorporates by reference paragraphs 1 through 94 set forth
above.

1 95. An actual controversy has now arisen and exists between Outland Canada and
2 Martin and Klassen concerning their respective rights, title, and interests in and to the D-2
3 Technology.

4 96. Outland USA owns equitable title to the D-2 Technology and Outland USA is
5 entitled to an assignment of legal title by Klassen. A judicial determination is necessary and
6 appropriate at this time in order that Outland Canada may confirm its ownership rights with
7 respect to the D-2 Technology.

8 **XI. TENTH CLAIM FOR RELIEF**

9 (Declaratory Relief against Martin, Klassen and Forhan)

10 97. Outland Canada incorporates by reference paragraphs 1 through 97 set forth
11 above.

12 98. An actual controversy has now arisen and exists between Outland Canada and
13 Martin, Klassen and Forhan concerning the existence of enforceable employment agreements
14 between Martin, Klassen and Forhan and Outland Canada and Outland USA. Outland Canada
15 contends that no enforceable employment agreement exists with respect to any of the
16 Counterclaim defendants with Outland USA because there was a failure of consideration for any
17 alleged agreement--specifically, no sale of Outland Design to Outland USA took place, which
18 was part of the consideration for any purported employment agreement with Martin, Klassen and
19 Forhan. Furthermore, the employment agreements were fraudulently induced by Martin,
20 Klassen, and Forhan by representing that Klassen and/or Outland Design owned the D-2
21 Technology when, in fact, Outland USA owned the technology.

22 99. Outland Canada desires a judicial determination and a declaration that enforceable
23 employment agreements do not exist between Martin, Klassen and Forhan and Outland Canada
24 and Outland USA.

1 100. A judicial determination is necessary and appropriate at this time in order that
2 Outland Canada may ascertain its rights and obligations with respect to the purported
3 employment agreements with Counterclaim defendants.

4 **REQUEST FOR RELIEF**

5 Counterclaimant, Outland Canada, requests that judgment entered in its favor and against
6 Counterclaim defendants Martin, Klassen, Forhan and Outland Design as follows:

7 **A. First Claim For Relief**

- 8 1. For compensatory damages in an amount to be determined at trial;
9 2. For punitive damages in an amount appropriate to punish the liable parties and
10 punish others from engaging in similar conduct;

11 **B. Second Claim For Relief**

- 12 1. For injunctive relief restraining Martin and Klassen, and all persons acting in
13 concert with them, from engaging in such further unlawful acts and from reaping
14 any additional commercial advantage from their misappropriation of Outland
15 Canada's trade secrets;
16 2. For injunctive relief requiring Martin and Klassen to immediately turn over all
17 trade secret information in their possession;
18 3. For injunctive relief ordering Martin and Klassen to identify every person and
19 entity that received any trade secret information from them;
20 4. For compensatory damages in an amount to be determined at trial;
21 5. For disgorgement of sums by which Counter defendants have been unjustly
22 enriched;
23 6. Alternatively, for a reasonable royalty or licensing fees;
24 7. For exemplary damages in an amount appropriate to punish the liable parties and
25 to deter others from engaging in similar conduct;

For reasonable attorney's fees incurred in litigating this action;

1 **C. Third Claim For Relief**

- 2 1. For compensatory damages in an amount to be determined at trial;
- 3 2. For disgorgement of sums by which Counterclaim defendants have been unjustly
- 4 enriched;
- 5 3. For punitive damages in an amount appropriate to punish the liable parties and to
- 6 deter others from engaging in similar conduct;

7 **D. Fourth Claim For Relief**

- 8 1. For damages in the form of value of the property converted;
- 9 2. For damages for the time and money reasonably expended in pursuit of the
- 10 converted property;
- 11 3. For punitive damages in an amount appropriate to punish the liable parties and to
- 12 deter others from engaging in similar conduct;

13 **E. Fifth Claim For Relief**

- 14 1. For compensatory damages in an amount to be determined at trial;
- 15 2. For punitive damages in an amount appropriate to punish the liable parties and
- 16 punish others from engaging in similar conduct;

17 **F. Sixth Claim For Relief**

- 18 1. For compensatory damages in an amount to be determined at trial;
- 19 2. For punitive damages in an amount appropriate to punish the liable party and
- 20 punish others from engaging in similar conduct;

21 **G. Seventh Claim For Relief**

- 22 1. For compensatory damages in an amount to be determined at trial;
- 23 2. For punitive damages in an amount appropriate to punish the liable party and
- 24 deter others from engaging in similar conduct.
- 25

1 **H. Eighth Claim For Relief**

- 2 1. For an order directing restitution in the form of disgorgement of any benefits
3 obtained as a result of Counter defendants' unlawful acts or business practices;
4 2. For an award of attorneys' fees incurred in litigating this action.

5 **I. Ninth Claim For Relief**

- 6 1. For an order from this Court declaring that Outland USA, a wholly owned
7 subsidiary of Outland Canada, holds all right, title and interest both equitable and
8 legal, in the D-2 Technology;
9 2. Alternatively, for an order from this Court creating a constructive trust for D-2
10 Technology, and requiring Klassen to immediately execute an assignment of the
11 D-2 Technology in favor of Outland USA.

12 **J. Tenth Claim For Relief**

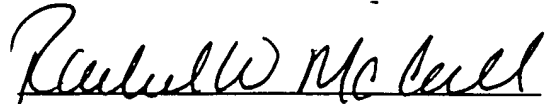
- 13 1. For an order from this Court declaring that no enforceable employment
14 agreements exist between Counter defendants and Outland Canada and Outland
15 USA;

16 **K. All Claims For Relief**

- 17 1. For attorneys' fees incurred in litigating this action;
18 2. For costs of suit incurred;
19 3. For interest on all damages at the legal rate; and
20 4. For such other and further relief as the Court deems just and proper.

1 DATED this 11th day of April, 2002.

2 DORSEY & WHITNEY LLP

3
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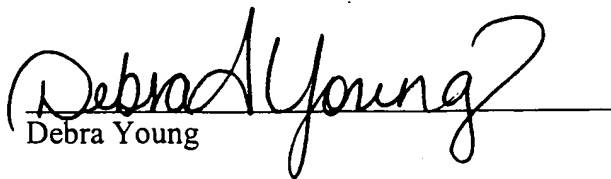
5 Randall R. Steichen, WSBA # 19264
6 Rachel W. McCall, WSBA #26777
7 Attorneys for Defendants and
8 Counterclaimants Outland
Technologies, Inc., Terry Knight, Ken
Bell, and Garry Mihaichuk

9 CERTIFICATE OF SERVICE

10 I HEREBY CERTIFY that a true and correct copy of the foregoing DEFENDANTS'
11 ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS has been furnished by
12 Facsimile and Federal Express to:

13
14 Douglas R. Shepherd
15 Shepherd And Abbott
16 222 Grand Avenue, Suite B
Bellingham, WA 98225

17 this 11th day of April, 2002.

18
19 
20 Debra Young

COPY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

OUTLAND DESIGN TECHNOLOGIES,
INC., a Washington corporation; UNICK
INVESTMENTS, LLC, a Washington
limited liability company; TERRY
MARTIN, an individual, and as a director
of Outland Technologies (USA), Inc.;
JAMES IRELAND, as a director of
Outland Technologies (USA), Inc.;
CRAIG FORHAN, an individual, and as a
director of Outland Technologies (USA),
Inc.; STEVE FRYER, as a director of
Outland Technologies (USA), Inc.; and
JAMES KLASSEN, an individual,

Plaintiffs,

vs.

OUTLAND TECHNOLOGIES (USA), INC.,
a Washington corporation;
OUTLAND TECHNOLOGIES (CANADA),
INC., an Alberta, Canada corporation;
TERRY KNIGHT; KEN BELL; GARRY
MIHAICHUK; and DOE 1 through DOE
50, inclusive,

Defendants.

Case No: CV02-0229Z

**AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT,
BREACH OF FIDUCIARY DUTY,
TORTIOUS INTERFERENCE WITH
CONTRACT, BREACH OF
EMPLOYMENT CONTRACTS,
FAILURE TO PAY WAGES,
CONVERSION, REPLEVIN AND
APPOINTMENT OF RECEIVER**

RECEIVED
JUL 19 2002
OFFICE OF PETITIONS

1 COME NOW plaintiffs, except plaintiff James Klassen, and for cause of
2 action against the above named defendants allege as follows:

3 **I. PARTIES**

4 01. Plaintiff Outland Design Technologies, Inc. ("ODTI") is a corporation
5 organized and existing under the laws of Washington, which has qualified to do
6 business in California, and was doing business in California at its principal place
7 of business located at 19200 Von Karman Avenue, Suite 600, Irvine, Orange
8 County, California. ODTI is presently doing business in Whatcom County,
9 Washington.

10 02. Plaintiff Unick Investments, LLC, ("Unick") is a limited liability
11 company organized and existing under the laws of Washington and is doing
12 business in Whatcom County, Washington.

13 03. Plaintiff Terry Martin ("Martin") is an individual residing in Whatcom
14 County, Washington and is a duly elected member of, and chairman of, the
15 Board of Directors of Outland USA and Outland Canada and the duly elected and
16 acting president and chief executive officer of Outland USA and Outland Canada.
17 Martin has purportedly been removed as an officer and director of said
18 corporations. One of the purposes of this action is for a judicial determination of
19 the status of Outland USA's officers and board. Martin also has an employment
20 agreement with defendants Outland USA and Outland Canada.

21 04. Plaintiff James Ireland ("Ireland") is an individual residing in Orange
22 County, California and is a duly elected member of the Board of Directors of
23 Outland USA. Ireland has purportedly been removed as a board member and
24 one of the purposes of this action is to determine his corporate status.

25 05. Plaintiff Craig Forhan ("Forhan") is an individual residing in Whatcom
26 County, Washington and is a duly elected member of the Board of Directors of
27 Outland USA and Outland Canada and the duly elected acting chief financial
28 officer of Outland USA and Outland Canada. Forhan has purportedly been
29 removed as an officer and director of said corporations and one of the purposes
30 of this action is for a judicial determination of the status of Outland USA's officers

1 and board. Forhan also has an employment agreement with defendants Outland
2 USA and Outland Canada.

3 06. Plaintiff Steve Fryer ("Fryer") is an individual residing in Orange
4 County, California and is a duly elected member of the Board of Directors of
5 Outland USA. Fryer has purportedly been removed as a board member and one
6 of the purposes of this action is to determine his corporate status.

7 07. Plaintiff James Klassen ("Klassen") is an individual residing in
8 Whatcom County, Washington.

9 08. Defendant Outland Technologies (USA), Inc. ("Outland USA") is a
10 corporation organized and existing under the laws of Washington which has
11 qualified to do business in California, and was doing business in California at its
12 principal place of business located at 17032 Murphy Avenue, Irvine, Orange
13 County, California. Outland USA also transacted business in Whatcom County,
14 Washington. At one time, and perhaps now 50% of Outland USA, was owned
15 by plaintiff ODTI. The present ownership of Outland USA is not known to
16 plaintiffs.

17 09. Defendant Outland Technologies, Inc. ("Outland Canada") is a
18 corporation organized and existing under the laws of Alberta, Canada doing
19 business in Alberta, Canada, which did business in Orange County, California and
20 claims to be the sole shareholder of Outland USA. Plaintiffs ODTI, Unick, and
21 Forhan own more than 50% of defendant Outland Canada.

22 10. Defendant Terry Knight ("Knight") is an individual and a member of
23 the Board Of Directors of Outland Canada and a senior vice-president for
24 corporate compliance and securities of Outland Canada and claims to be a
25 director and perhaps officer of Outland USA.

26 11. Defendant Ken Bell ("Bell") is an individual and a member of the
27 Board of Directors of Outland Canada and a vice-president for investor relations
28 of Outland Canada and claims to be a director and perhaps officer of Outland
29 USA.
30

12. Defendant Garry Mihaichuk ("Mihaichuk") is an individual and a member of the Board of Directors of Outland Canada and claims to be a director of Outland USA.

13. The true names, identities, and capacities of defendants John Does are unknown to plaintiffs and therefore, plaintiffs, except plaintiff Klassen, sue said defendants by such fictitious names and when their names, identities, and capacities are known to plaintiffs this amended complaint will be amended to show their true name, identity, and capacity.

14. Plaintiffs are informed and believe and thereon allege that at all times mentioned herein, all defendants were acting in concert and each defendant was the agent of each remaining defendant and was acting within the scope and purpose of such agency. References to "defendants" shall refer to all defendants except defendant Outland USA. When defendant Outland USA is intended to be included its name will be used.

II. JURISDICTION

15. Plaintiffs Martin and Forhan are U.S. citizens and residents of Washington State. **Plaintiff Klassen is a Canadian Citizen but is a resident of Whatcom County, Washington.** Plaintiffs Ireland and Fryer are U.S. citizens and residents of California. Plaintiffs ODTI and Unick are a Washington corporation and a Washington limited liability company respectively. The citizenship of defendants Knight, Bell and Mihaichuk is Canadian and said defendants reside in Alberta, Canada. Defendant Outland USA is a Washington corporation. Defendant Outland Canada is an Alberta, Canada corporation. Damages alleged by plaintiffs include more than \$500,000.00 due plaintiffs Martin and Forhan as severance pay due under written employment agreements with defendant Outland USA and Outland Canada after the wrongful termination of said plaintiffs' employment by defendants. Plaintiffs' and defendants' allege ownership and misappropriation by the other party of technology purportedly worth millions of dollars.

III. FACTS

16. Outland USA is in the business of developing, designing, and licensing technology utilizing patented CvR™ technology (rotary positive displacement) in the power generation industry, oil and gas, and other industrial applications (pumps, compressors, fluid transfer, etc.)

17. Outland Canada purports that Outland USA is a wholly owned subsidiary of Outland Canada. However, no stock has apparently ever been issued by Outland USA to Outland Canada; therefore any purported action by Outland Canada taken as a shareholder of Outland USA is void.

18. Unick Investments, Forhan, and ODTI owned more than 50% of the voting shares of Outland Canada prior to what defendants allege was a conversion of certain warrants or preferred stock held by others. Plaintiffs believe and therefore allege that during the period November 22, 2001 through November 24, 2001, and for some period of time thereafter, Unick and ODTI owned a majority of the voting shares of Outland Canada. Defendants Knight and Bell are minority shareholders in Outland Canada while Mihaichuk was neither an officer nor shareholder in Outland Canada. Plaintiff Forhan controls plaintiff Unick Investments. Plaintiffs Martin and Klassen own 60% of and control plaintiff ODTI.

19. Plaintiffs are informed and believe and thereon allege that the members of the Board of Directors of Outland Canada at the time of the incidents complained of, i.e. November 22, 2001 through November 30, 2001, were the three defendants, Knight, Bell and Mihaichuk, and the two plaintiffs, Martin and Forhan.

20. The members of the Board of Directors of Outland USA during the period November 22, 2001 through the present include four of the individual plaintiffs, Martin, Ireland, Forhan, and Fryer.

21. On November 19, 2001, plaintiffs Martin and Forhan received by fax notice from defendant Mihaichuk that there would be a meeting of the Board of Directors of Outland Canada at 9:00 a.m. in Calgary, Alberta Canada on

1 Thursday, November 22, 2001, a national holiday (Thanksgiving) in the United
2 States. The notice indicated that the board would discuss "[C]larification of
3 issues relating to the technology known as the D-2 Technology" and
4 "[S]hareholder Issues." The notice was misleading and deceptive in that it did
5 not give notice of the issues actually discussed at the meeting.

6 22. Because of the short notice of the meeting, and because of their
7 involvement in family functions on the Thanksgiving weekend, plaintiffs Martin
8 and Forhan were not able to arrange transportation and to attend the meeting
9 noticed for November 22, 2001. Martin and Forhan did participate in the
10 Directors of Outland Canada meeting by telephone, which was authorized by
11 Outland Canada's by-laws.

12 23. There was no notice given of a meeting of the members of the Board
13 of Directors of Outland USA to be held on November 22, 2001 or at any time
14 thereafter to any plaintiff.

15 24. On November 22, 2001, and apparently at a meeting held contrary to
16 and in violation of Washington law, defendants Knight, Bell and Mihaichuk,
17 purportedly acting as members of the Board of Directors of Outland USA,
18 resolved that "Operations and Management of Outland Technologies (USA), Inc.
19 be suspended from the close of this meeting"

20 25. The purported resolution is legally insufficient for reasons including,
21 but not limited to:

22 25.1 Defendants Knight, Bell and Mihaichuk were not, at the
23 time the purported resolution was made, members of the Board of Directors of
24 Outland USA.

25 25.2 No notice of any meeting of the Board of Directors of
26 Outland USA to be held on November 22, 2001, was given by anyone to plaintiffs
27 Martin, Ireland, Forhan, and Fryer, the duly elected and acting members of the
28 Board of Directors of Outland USA on November 22, 2001.

29 25.3 Nothing in the bylaws or other governing documents of Outland
30 USA or the law of the state of Washington authorizes the Board of Directors to

1 act as a board without a board meeting without unanimous approval of the
2 board members.

3 26. On or about November 24, 2001, while the officers and directors of
4 Outland USA were on Thanksgiving holiday, defendants, without notice to
5 plaintiffs, physically and wrongfully took possession of the premises leased by
6 Outland USA located at 17032 Murphy Avenue, Irvine, California; changed the
7 locks on the premises; posted armed guards at the premises; and prevented
8 plaintiffs from accessing the premises. This action effectively shut down the
9 business of Outland USA without cause and without legal right. Outland USA
10 was responsible for 90% of the entire business of Outland Canada and Outland
11 USA.

12 27. On November 26, 2001, defendants sent a notice dated November
13 24, 2001, on Outland Canada letterhead, to plaintiffs and others indicating that
14 defendants, had "suspended" the operations of Outland USA and that the
15 "Board" (without designating whether it was the Board of Directors of Outland
16 USA or Outland Canada) would be conducting a review of all company
17 operations.

18 28. Defendants, from and after November 26, 2001, have denied
19 plaintiffs access to their offices at the principal place of business of Outland USA,
20 including access to their personal property and documentary evidence necessary
21 for the conduct of the business of Outland USA and the prosecution of this
22 lawsuit.

23 29. Defendants attempted to freeze the Whatcom County, Washington
24 bank accounts, of Outland USA without notice and then to change the authorized
25 signatories on the accounts from plaintiffs to defendants.

26 30. Plaintiffs are informed and believe and therefore allege that during
27 the "takeover" of the Outland USA premises, defendants, without consent of
28 plaintiffs, seized personal property owned by plaintiffs, including corporate
29 records of ODTI and Unick, confidential, proprietary information owned by
30 Martin, Forhan, and Klassen, and personal effects of plaintiffs, as well as rifled

1 through plaintiffs' personal and company files, both computer and other, and
2 either took or deleted files, all without the consent of plaintiffs. Prior to the
3 unlawful "takeover" of Outland USA by defendants, plaintiffs owned valuable
4 assets, including contract rights worth at least several hundred thousand dollars.

5 31. Defendants have refused to return all the plaintiff's personal property
6 described in paragraph 30 above. Defendants have refused to even disclose the
7 location of much of said personal property and, as to some of such property,
8 wrongfully claimed the property belonging to defendants.

9 32. On or about February 1, 2001, plaintiffs Martin and Forhan entered
10 into written Employment Agreements with Outland USA and Outland Canada that
11 obligated said defendant to pay certain severance benefits to them upon
12 termination of their employment.

13 33. As part of the defendants' "shut down" of Outland USA, plaintiffs
14 Martin's and Forhan's employment by Outland USA was terminated under
15 conditions entitling said plaintiffs to severance pay benefits.

16 34. Defendants have refused to pay plaintiffs Martin and Forhan any of
17 the severance pay benefits they are entitled to.

18 35. Defendants are withholding personal property that belongs to
19 plaintiffs as described above. Defendants wrongfully and unlawfully seized the
20 corporate premises of Outland USA and "shut down" that company's business
21 operations, making it probable that the assets of said corporation and the
22 personal property belonging to plaintiffs which was on the business premises of
23 said corporation are in danger of being lost, removed or materially injured.

24 36. It is disputed between the parties as to who are the lawful directors
25 and officers of Outland USA, and thus, who lawfully controls Outland USA. It is
26 not disputed that defendants "shut down" Outland USA. Plaintiffs believe and
27 therefore allege that Outland USA is in the process of dissolution or is insolvent
28 or is in imminent danger of insolvency.
29
30

1 37. Based upon the facts alleged herein and in the Amended
2 Counterclaims filed by defendants, to secure ample justice to the parties, it is
3 appropriate for the Court to appoint a receiver, pursuant to the laws of
4 California, to take charge of the assets of Outland USA, as well as personal
5 property which belonged to plaintiffs on the business premises of Outland USA at
6 the time defendants excluded the individual plaintiffs from the business premises
7 of Outland USA and to manage and dispose of said assets as the Court
8 directs.

9 38. Plaintiffs incorporate the allegations of paragraphs 1 through 36 in all
10 causes of actions listed herein below.

11 **IV. CAUSES OF ACTION**

12 **1. DECLARATORY JUDGMENT RCW 7.24.**

13 39. An actual controversy has arisen and now exists between plaintiffs
14 and defendants concerning their respective contractual and statutory rights and
15 duties, in that plaintiffs contend that the actions taken by defendants in the
16 name of Outland Canada and/or Outland USA have been without proper
17 corporate authority, without legal authority, deceptive, fraudulent, and
18 oppressive, and have endangered the best interests of Outland USA and Outland
19 Canada.

20 40. Plaintiffs are informed and believe and therefore allege that
21 defendants contend that their actions have been proper and taken with proper
22 legal and corporate authority.

23 41. Plaintiffs desire a judicial determination of their rights and duties and
24 a declaration as to whether the action taken by defendants Terry Knight, Ken
25 Bell and Gary Mihaichuk, purporting to act as the Board of Directors of Outland
26 USA and Outland Canada, purporting to act as the sole shareholder of Outland
27 USA, in closing the operations of Outland USA, seizing control of its premises,
28 excluding its officers, employees, and plaintiff board members from said
29 premises, and attempting to seize its bank account(s) in Whatcom County,
30 Washington, was void or otherwise unlawful.

1 42. Plaintiffs desire a judicial declaration as to who properly constituted
2 the board of directors and proper officers of Outland USA on and before
3 December 11, 2001, and who presently constitutes the members of the board of
4 directors and proper officers of Outland USA.

5 43. Plaintiffs desire a judicial declaration as to which, if any, corporate
6 actions taken by any defendant on behalf of defendant Outland USA, since
7 November 19, 2001, was a lawful action of Outland USA.

8 44. For such other and further judicial declarations regarding the
9 ownership and management of Outland USA, at such times as is necessary and
10 appropriate under the circumstances, so plaintiffs may ascertain their rights and
11 duties.

12 **2. APPOINTMENT OF RECEIVER:**

13 45. Outland USA is in imminent danger of insolvency and has issues
14 regarding who is entitled to control and manage the corporation. A receiver is
15 necessary to secure ample justice to the parties to this action.

16 46. Outland USA is indebted in large sums money, \$500,000 and more, to
17 plaintiffs Forhan and Martin under the terms and conditions of employment
18 contracts. If a receiver is not appointed to take charge of the assets of Outland
19 USA, it will likely be disastrous to the business of Outland USA and to its
20 creditors and stockholders.

21 47. At various times prior to the preparation of this Amended Complaint,
22 plaintiffs have demanded of defendants that they take prompt action to improve
23 the financial situation of Outland USA. As regards the control and management
24 of Outland USA during this litigation, plaintiffs have no adequate remedy at law.

25 48. Plaintiffs seek the judicial appointment of a receiver to take charge of
26 the books, records, property, and assets of every kind of Outland USA to
27 continue the business of Outland USA pursuant to orders of this court during this
28 litigation.

29 **3. BREACH OF FIDUCIARY DUTY:**

30 49. At all times herein defendants Outland Canada, Knight, Bell, and

1 Mihaichuk claimed to be operating as directors and/or officers of defendants
2 Outland Canada or Outland USA.

3 50. As directors and officers they owed a fiduciary duty to the
4 shareholders of Outland Canada, Outland USA, and to plaintiffs. This fiduciary
5 duty includes the duties of loyalty, trust, fair dealing, and good faith.

6 51. The activities of said defendants as described herein were a breach of
7 their fiduciary duty to plaintiffs. This breach of fiduciary duty is continuing and
8 plaintiffs have been damaged thereby in an amount to be proven at trial and
9 which amount is likely as follows:

10 51.1 As to Plaintiff Martin: More than \$454,000

11 51.2 As to Plaintiff Forhan: More than \$300,000

12 51.3 As to Plaintiff ODTI: More than \$5,580,000 and the damages may
13 reach \$25,000,000

14 51.4 As to Plaintiff Unick: More than \$1,800,000

15 **4. TORTIOUS INTERFERENCE WITH CONTRACTS:**

16 52. The other defendants were aware of defendant Outland USA's license
17 agreement with RLC Christianson. The individual defendants for their own
18 benefit, and not for the benefit of Outland USA or plaintiffs, interfered in that
19 relationship in a manner that has damaged Outland USA and plaintiffs. This
20 interference has damaged Outland USA in a sum expected to exceed \$3,000,000
21 annually and therefore in an amount that ultimately damages the shareholders of
22 Outland USA, including plaintiff shareholders. This claim is brought by plaintiffs
23 as a shareholder's derivative action. Under Washington common law and statute
24 plaintiffs are entitled to their reasonable attorney's fees, costs, and expenses
25 incurred herein.

26 53. The individual defendants were aware of plaintiffs Martin and
27 Forhan's employment agreements with Outland USA and Outland Canada and
28 have wrongfully interfered with the employment contracts as set forth herein.
29 Plaintiffs Forhan and Martin have suffered the destruction of their employment
30 relationship to their damage as follows:

1 53.1. Martin has suffered damages expected to exceed \$454,993.50, plus
2 interest, attorneys fees, and punitive damages. A copy of the contract is
3 attached hereto as Exhibit 1.

4 53.2 Forhan has suffered damages expected to exceed \$225,000, plus
5 interest, attorneys' fees, and punitive damages. A copy of a draft of the contract
6 is attached hereto as Exhibit 2. The original executed contract was taken by
7 defendants on or about November 22, 2001.

8 **5. BREACH OF EMPLOYEMENT CONTRACTS:**

9 54. On or about February 1, 2001, Martin, for good and valuable
10 consideration, entered into an employment agreement with defendants Outland
11 Canada and Outland USA. On or about December 18, 2001, defendants Outland
12 Canada and Outland USA, without good cause and without good reason, fired or
13 terminated Martin.

14 55. By agreement, defendants Outland USA and Outland Canada owe to
15 Martin more than \$454,000.00, plus withheld medical benefits, attorneys' fees,
16 and punitive damages. Despite repeated demands, defendants have not paid
17 these sums to Martin. Further, defendants, including Outland USA, wrongfully
18 canceled plaintiff Martin's medical benefits and coverage at a time when his 20
19 year-old son was undergoing very expensive treatment for cancer. This wrongful
20 conduct was outrageous and has caused defendant Martin mental pain and
21 anguish.

22 56. Pursuant to the Agreement and California law, Martin is entitled to his
23 reasonable attorneys' fees, costs and expenses, and punitive damages.

24 57. On or about February 1, 2001, Forhan, for good and valuable
25 consideration, entered into an employment agreement with defendants Outland
26 Canada and Outland USA. On or about December 18, 2001, defendants Outland
27 Canada and Outland USA, without good cause and without good reason, fired or
28 terminated Forhan.

29 58. By agreement, defendants Outland USA and Outland Canada owe to
30 Forhan more than \$225,000, plus withheld medical benefits, attorneys' fees, and

1 punitive damages. Despite repeated demands, defendants have not paid these
2 sums to Forhan.

3 59. Pursuant to the Agreements and California law, Forhan is entitled to
4 his reasonable attorneys' fees, costs and expenses, and punitive damages.

5 **6. FAILURE TO PAY WAGES:**

6 60. Defendants Outland Canada and Outland USA have failed to pay
7 plaintiffs Martin and Forhan wages, salary, and benefits due them pursuant to
8 contract and pursuant to California law.

9 61. Despite repeated demands for payment, defendants Outland Canada
10 and Outland USA continue to refuse to pay wages, salary, and benefits due
11 plaintiffs Martin and Forhan, and Martin and Forhan have been damaged by this
12 wrongful conduct.

13 62. This claim is governed by California law and plaintiffs Martin and
14 Forhan are entitled to their reasonable attorney's fees, costs and expenses, and
15 any and all additional damages allowed by California law, including punitive
16 damages.

17 **7. CONVERSION/REPLEVIN:**

18 63. On or about November of 2001, plaintiffs Martin and Forhan were,
19 and still are, owners and are entitled to the immediate possession of personal
20 property wrongfully taken by defendants.

21 64. Defendants have wrongfully taken possession of property belonging
22 to plaintiffs Martin and Forhan and despite repeated demands have not returned
23 those items, converting them to defendants' possession.

24 65. Defendants have refused and still refuse to return the personal
25 property and they have wrongfully and unlawfully converted the property to their
26 own use, all to plaintiffs Martin and Forhan's damage.

27 **FOREIGN LAW:**

28 66. By contract and by common law, California law applies to plaintiffs'
29 breach of employment contract, tortious interference with Martin's and Forhan's
30 contract, and wage and salary claims.

1 **PUNITIVE DAMAGES:**

2 67. Punitive damages of plaintiffs Martin and Forhan are expected to
3 exceed \$1,000,000 each.

4 **ATTORNEYS' FEES:**

5 68. By California law, plaintiffs Martin and Forhan are entitled to their
6 reasonable attorneys' fees on their breach of contract claims. By Washington
7 law, plaintiffs are entitled to their reasonable attorneys' fees if they are
8 successful on their shareholder derivative claim and they create a common fund
9 for Outland USA shareholders.

10 **INCORPORATION BY REFERENCE:**

11 69. Except as amended herein, plaintiffs, except plaintiff Klassen,
12 incorporate its original complaint filed and served herein as though fully pled
13 herein. Every paragraph herein above is incorporated, as necessary, into every
14 cause of action claimed herein.

15 **V. PRAYER FOR RELIEF**

16 WHEREFORE, plaintiffs, except plaintiff Klassen, pray for judgment as
17 follows:

18 A. For a declaration that certain actions taken by defendants in the name
19 of Outland Canada and Outland USA have been without proper corporate
20 authority, without legal authority, and therefore are void and of no legal force or
21 effect.

22 B. For the appointment of a receiver to take charge of the books, papers,
23 property and assets of Outland USA, and that the receiver be authorized, until
24 the further order of the court, to continue the business of Outland USA.

25 C. For a determination that the actions of defendants Bell, Knight and
26 Mihaichuk, and others, including but not limited to, the actions taken in
27 November and December of 2001, and all actions taken since that date in the
28 name of Outland USA and/or Outland Canada and including but not limited to
29 excluding plaintiffs from the corporate premises, property, and activities, was a
30 breach of their fiduciary duty to the plaintiffs, that this wrongful conduct was a

1 proximate cause of damage to said plaintiffs, and for a determination of the
2 amount of damages caused thereby.

3 D. For a determination that the actions of defendants Outland Canada,
4 Knight, Bell, and Mihaichuk in causing the termination of employment of Martin
5 and Forhan by Outland USA and/or Outland Canada was wrongful interference
6 with plaintiffs contract rights, that this wrongful conduct was a proximate cause
7 of damage to Martin and Forhan, and for a determination of the amount of
8 damages caused thereby.

9 E. For a determination that defendants, including defendant Outland USA,
10 if this court determines that the defendants who fired Martin and Forhan had the
11 proper authority of Outland USA, terminated the employment contracts of Martin
12 and Forhan without cause and wrongfully refused to pay severance pay and
13 benefits due to Martin and Forhan following said termination, that this wrongful
14 conduct was a proximate cause of damage, and for a determination of the
15 damages caused by defendants' breaches of contract.

16 F. For a determination that defendants Outland Canada and Outland USA
17 owe wages, salary and/or benefits to plaintiffs Martin and Forhan pursuant to
18 California law, including, but not limited to, punitive damages.

19 G. For a determination that the actions of defendants Outland Canada,
20 Knight, Bell, and Mihiachuk in unlawfully taking over the Outland USA business
21 premises, taking and refusing to return, and in some cases using, valuable
22 personal property belonging to Martin and Forhan converted plaintiffs property
23 and were willful, wanton, malicious and oppressive, have damaged plaintiffs and
24 that plaintiffs are entitled to an award of exemplary and punitive damages.

25 H. For a determination that all of the personal property belonging to
26 plaintiffs should be ordered returned to said plaintiffs.

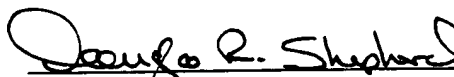
27 I. For an award of damages to each plaintiff, according to proof, of the
28 damages caused each by defendants wrongful conduct.

29 J. For punitive damages on all claims in which punitive damages are
30 allowed by law, including plaintiffs claim for breach of an employment contract.

- 1 K. For plaintiffs' reasonable attorneys fees, costs and expenses.
2 L. For such other and further relief as the court may deem proper.
3

4 DATED this 21st day of June, 2002.
5

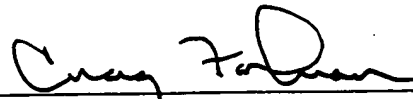
6 SHEPHERD and ABBOTT

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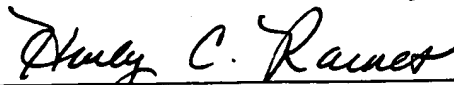
9 Douglas R. Shepherd of
10 Attorneys for Plaintiffs
11 WSBA #9514

12 STATE OF WASHINGTON }
13 COUNTY OF WHATCOM } ss
14

15 Craig Forhan, being first duly sworn upon oath, deposes and says: I am
16 one of the plaintiffs herein. I have read the foregoing Amended Complaint,
17 know the contents thereof, and believe the same to be true.
18

19 
20

21 SIGNED AND SWORN to before me this 21st day of June, 2002, by Craig
22 Forhan.
23

24 
25

26 NOTARY PUBLIC in and for the state
27 of Washington, residing at Bellingham.
28 My commission expires: 4-29-04.
29
30

EMPLOYMENT AGREEMENT

This Employment Agreement ("AGREEMENT") entered into as of the 1st day of February, 2001, effective immediately upon approval by the Board of Directors ("EFFECTIVE DATE"), is entered into by and between Terry Martin (the "EMPLOYEE") and Outland Technologies, Inc., a body corporate having its registered office in the province of Alberta, Canada ("OUTLAND CANADA"), and its wholly owned subsidiary, Outland Technologies (USA), Inc., a Washington corporation and Outland Technologies, Inc. (the "COMPANY").

The COMPANY and prospective EMPLOYEE desire to establish an Employment Agreement in the capacity herein described, on the terms and conditions and subject to the rights of termination hereinafter set forth, and EMPLOYEE is willing to accept such employment on such terms and conditions.

In consideration of the mutual agreements hereinafter set forth, the EMPLOYEE and the COMPANY have agreed and do hereby confirm their agreement as follows:

1. **EMPLOYMENT AS PRESIDENT AND CHIEF EXECUTIVE OFFICER.** The COMPANY does hereby employ, engage, and hire EMPLOYEE as Chief Executive Officer for the COMPANY, and the EMPLOYEE does hereby accept and agree to such hiring, engagement and employment. The EMPLOYEE'S duties during the employment period (defined below) shall be the duties set forth in this Agreement, shall include authority to enter into contracts, including all Executive Employment contracts other than his own, hire, terminate or bind the COMPANY and duties regarding the operations of the COMPANY as authorized by the Board of Directors. The President and Chief Executive Officer for Outland Technologies (USA), Inc. and Outland Technologies (Canada), Inc., shall be primarily responsible for the operation, management and direction of the COMPANY, shall serve at the direction of the Board of Directors and shall enjoy all of the same privileges and benefits of other President's and CEO's similarly situated and as hereinafter set forth. The EMPLOYEE shall devote his full-time energy and skill to the performance of his duties for the COMPANY and for the benefit of the COMPANY, reasonable vacations authorized by the COMPANY's Board of Directors, and reasonable absences because of illness excepted; and shall exercise due diligence and care in the performance of his duties for the COMPANY under this AGREEMENT. Because Outland Canada and Outland USA are related entities, a change in EMPLOYEE'S position from one entity (CANADA or USA) shall not change the compensation of EMPLOYEE set forth in this AGREEMENT.

2. **TERM OF AGREEMENT.** This AGREEMENT commences on the effective date and ends on the date of termination of the EMPLOYEE'S employment ("TERMINATION DATE"), under this or any successor agreement and shall be referred to as the "EMPLOYMENT PERIOD". The term ("TERM") of this AGREEMENT shall commence on the effective date, shall continue for a period of one (1) year, and at EMPLOYEE'S option, shall be automatically renewed thereafter for successive one (1) year terms to be renegotiated by COMPANY and EMPLOYEE, unless terminated in writing as set forth in this AGREEMENT. This AGREEMENT shall renew automatically thereafter for one (1) year terms unless sooner terminated as provided for in this AGREEMENT.

3. COMPENSATION.

(a) The COMPANY shall pay the EMPLOYEE, and the EMPLOYEE agrees to accept from the COMPANY, in full payment for all of his services to be performed for the COMPANY, compensation in the total annual sum set forth below, subject to the terms and conditions of this AGREEMENT and payable bi-monthly or at such other times or times as the EMPLOYEE and the COMPANY shall mutually agree:

POSITION:

President and Chief Executive Officer of Outland Canada and Outland USA.

ANNUAL BASE SALARY:

\$303,329.00 with annual cost of living increases of five percent (5%) per year.

RENEWABLE TERM:

Effective immediately upon approval by Board of Directors, for a term of one (1) year with one (1) year automatic renewable terms thereafter.

STOCK OPTIONS:

Stock Options to purchase, at the time of signing this Agreement, 250,000 common shares of the Company at the exercise price of \$4.00 per share (Canadian), plus an additional 250,000 shares when those additional shares become available under the Company's Stock Option Plan (not to exceed one (1) year from this Agreement at the next stock split price) pursuant to the terms and conditions of said Plan and pricing of the stock exchange upon which the shares are listed.

INCENTIVE COMPENSATION:

Subject to satisfaction of criteria established by the Board of Directors and achievement of such objectives as the Board of Directors or compensation committee may establish, cash bonuses and other incentive compensation including stock options, at least once annually.

PROFIT SHARING:

Three percent (3%) of annual Company profits shall be paid to Employee as an Executive Compensation annual bonus.

ANNUAL STOCK OPTIONS:

Stock options per Company policy. Employee may elect to use annual

bonus/profit sharing amount to acquire shares in Outland Technologies, Inc. in a like amount. If Employee makes said election, excise taxes shall be paid by the Company.

SEVERANCE AGREEMENT:

Eighteen (18) months. This will include annual base salary, annual bonus (pro rata) and medical benefits for eighteen months.

INSURANCE PACKAGE:

Company medical (PPO) plan for employee and family.

LIFE INSURANCE:

Per company policy, if any.

HOLIDAYS:

Per company policy.

VACATION:

Four (4) weeks per year. Five (5) weeks per year after two (2) years of service. If vacation not taken during year, balance of vacation time will be paid to Employee.

RETIREMENT PLAN:

401K retirement plan or equivalent when adopted.

COMPANY EXPENSES:

Company car, cell phone and business expenses per Company policy, including Company credit card.

RELOCATION EXPENSES:

Moving expenses, security deposit and first year's rent, lease or mortgage payments.

(b) EMPLOYEE and COMPANY stipulate and agree that all intellectual property, ideas, concepts, inventions and ventures for profit created during the term of his employment are made for hire for COMPANY and are hereby assigned to and exclusively owned by the COMPANY. This is a material covenant without which the COMPANY would not enter into this AGREEMENT;

(c) Terry Martin reserves the right to be a Director of the COMPANY (USA and Canada) and/or appoint a Director in his place at all times during the term of this AGREEMENT.

4. FRINGE BENEFITS. EMPLOYEE shall be entitled to participate in any benefit programs adopted from time to time by the COMPANY for the benefit of its employees, and EMPLOYEE shall be entitled to receive such other fringe benefits as may be granted to him from time to time by the COMPANY's Board of Directors.

(a) Stock Options. EMPLOYEE and COMPANY acknowledge that, as of March 1, 2001, there were issued an outstanding and owned by Terry Martin, options to purchase 190,000 shares of the COMPANY'S common stock, par value \$4.00 per share Canadian ("Common Stock"). As of the Effective Date of this Agreement, the COMPANY hereby grants to EMPLOYEE, an additional 250,000 shares when those additional shares become available under the Company's Stock Option Plan (not to exceed one (1) year from this Agreement at the next stock split price) pursuant to the terms and conditions of said Plan and pricing of the stock exchange upon which the shares are listed. The parties further acknowledge and agree, and the COMPANY does hereby also grant to EMPLOYEE, additional incentive Stock Options equal to 3% of the COMPANY'S gross annual revenue, each year during the term of this Agreement, at an exercise price pursuant to the terms and conditions of Company's Stock Option Plan and pricing of stock exchange upon which said shares are listed.

(b) Incentive Compensation. Subject to the satisfaction of criteria established by the Board of Directors and the achievement of such objectives as the Board of Directors or compensation committee may establish, EMPLOYEE may receive additional cash bonuses and other incentive compensation including stock options, it being understood that the Board of Directors or compensation committee shall at least once annually consider the payment of additional incentive compensation in the form of cash and/or stock options to EMPLOYEE.

(c) Benefit Plans. EMPLOYEE shall be entitled to participate in any benefit plans and employee benefits available to other Employees of the COMPANY, subject to any restrictions (including waiting) specified in such Plans. COMPANY has no present 401K plan.

(d) Vacation. EMPLOYEE shall be entitled to four (4) weeks of paid vacation per calendar year for years one and two of employment by the COMPANY; five (5) weeks per calendar year for years three or more of service (3+); with such vacation to be scheduled and taken in accordance with the COMPANY'S standard Vacation Policies, one week at a time.

(c) Keyman Insurance. COMPANY shall obtain for the benefit of COMPANY and EMPLOYEE, Keyman Term Life Insurance in an amount to be determined by the Board of Directors. The beneficiaries of said Keyman Insurance shall be 75% COMPANY and 25% any beneficiary designated by EMPLOYEE.

5. **BUSINESS EXPENSES.** The COMPANY shall reimburse the EMPLOYEE for any and all necessary, customary, and usual expense, properly receipted in accordance with COMPANY policies, incurred by EMPLOYEE on behalf of the COMPANY.

6. **TERMINATION OF EMPLOYEE'S EMPLOYMENT.**

(a) Death. If the EMPLOYEE dies while employed by the COMPANY, his employment shall immediately terminate. The COMPANY'S obligation to pay the EMPLOYEE'S Base Monthly Compensation shall cease as of the date of EMPLOYEE'S death. However, EMPLOYEE'S spouse shall receive half of EMPLOYEE'S Base Monthly Compensation for twelve (12) months from EMPLOYEE'S date of death. Thereafter, EMPLOYEE'S beneficiaries, trustees, or estates shall receive benefits in accordance with the COMPANY'S insurance and other applicable programs and plans then in effect.

(b) Disability. If, as a result of EMPLOYEE's mental or physical incapacity, EMPLOYEE shall be unable to perform the services for the COMPANY contemplated by this AGREEMENT in the manner he previously performed during a period of one hundred twenty (120) business days in any consecutive seven (7) month period ("disability"), EMPLOYEE's employment may be terminated by the COMPANY for disability. During any period prior to such termination during which EMPLOYEE is absent from the full-time performance of EMPLOYEE's duties with the COMPANY due to disability, the COMPANY shall continue to pay EMPLOYEE's Base Monthly Compensation at the rate in effect at the commencement of such period of disability. Any such payments made to EMPLOYEE shall be reduced by amounts received from disability insurance obtained or provided by the COMPANY. Subsequent to the termination provided for in Section 6(b), EMPLOYEE's benefits shall be determined under the COMPANY's retirement, insurance, and other compensation programs then in effect in accordance with the terms of such programs.

(c) Termination by the COMPANY. The COMPANY may terminate EMPLOYEE's employment under this AGREEMENT without cause upon thirty (30) days written notice or for "cause" at any time prior to the expiration of the term of the AGREEMENT only upon the occurrence of any one or more of the following events: (i) the material breach of this AGREEMENT by EMPLOYEE, including repeated willful neglect of EMPLOYEE's duties. However, physical presence at the business location shall not be considered neglect of EMPLOYEE'S duties or lack of diligence unless specifically directed by the Board of Directors. EMPLOYEE's material lack of diligence and attention in performing services required by this Agreement, including minimum performance requirements, or EMPLOYEE's willful failure to implement or adhere to policies established by, or directives of, the COMPANY's Board of Directors; (ii) Conduct of a criminal nature that may have an adverse impact on the COMPANY's reputation and standing in the industry and community; or (iii) fraudulent conduct in connection with the business affairs of the COMPANY, regardless of whether said conduct is designed to defraud the COMPANY or others.

In the event of termination for cause, the COMPANY's obligation to pay EMPLOYEE shall cease as of the termination date. If EMPLOYEE's employment is terminated for cause, EMPLOYEE's employment may be terminated immediately without any advance written notice. No compensation in any form shall be payable to EMPLOYEE upon EMPLOYEE'S termination for cause.

(d) Termination by the EMPLOYEE for Good Reason. The EMPLOYEE shall have the right to terminate this AGREEMENT for Good Reason. For purposes of this AGREEMENT, "Good Reason" shall mean the occurrence without the EMPLOYEE's prior written consent, of any one or more of the following events: (i) termination or reassignment of James Klassen into any position other than Vice President - Intellectual Property Development; (ii) the assignment to the EMPLOYEE of any duties that are materially inconsistent with, or reflect a material continuing reduction of the powers and responsibilities of EMPLOYEE, or a change of the EMPLOYEE'S reporting responsibilities as set forth in this Agreement, or material improper interference with the EMPLOYEE's ability to materially perform the duties and responsibilities set forth in this Agreement.

The EMPLOYEE agrees to provide the COMPANY with thirty (30) days prior written notice of any termination for Good Reason, during which thirty (30) day period the COMPANY shall have the right to cure the circumstances giving rise to the Good Reason stated in such Notice. In the event of termination for Good Reason, the EMPLOYEE shall receive the compensation pursuant to the provisions of Section 7 hereof.

(c) Employee Voluntarily Quits. In the event EMPLOYEE voluntarily quits, COMPANY shall owe no additional consideration to EMPLOYEE and all compensation benefits shall be terminated effective immediately.

7. COMPENSATION UPON TERMINATION BY THE COMPANY OTHER THAN FOR CAUSE OR BY THE EMPLOYEE FOR GOOD REASON. If the EMPLOYEES employment shall terminate (i) by election of the COMPANY other than for cause or (ii) by the election of EMPLOYEE for Good Reason, the EMPLOYEE shall be entitled to the following benefits:

(a) Payment of unpaid Base Monthly Compensation. Payment of annual base salary, annual bonus (pro rata) and medical benefits for eighteen (18) months. Said severance compensation shall be paid to the EMPLOYEE by COMPANY, in a lump sum, within five (5) days of the termination date.

(b) Presumption of Paragraph 7 - Termination. All terminations shall be presumed to be pursuant to this Paragraph 7 until proven otherwise by competent admissible evidence.

8. NON-COMPETITION, CONFIDENTIALITY, TRADE SECRET AND PRIVACY PROVISIONS.

(a) Right to Company Materials. EMPLOYEE agrees that all styles and all COMPANY DATA, designs, customer lists, materials, books, files, reports, correspondence, records, and other documents (COMPANY materials) used, prepared, or made available to EMPLOYEE, shall be and shall remain the property of the COMPANY. EMPLOYEE agrees that this information is confidential, represents protected trade secrets of COMPANY and EMPLOYEE shall keep the information confidential. Upon the termination of employment or the expiration of this AGREEMENT, all COMPANY materials shall be returned immediately to the COMPANY, and EMPLOYEE shall not make or retain any copies thereof nor shall EMPLOYEE disclose to any other person or use said information for profit nor to interfere with the present and prospective economic advantage of COMPANY.

(i) Company Data Defined. All proprietary technology, patent information, trade secrets, confidential information, formulas, patterns, devices, compilations of information, drawings, computer files, e-mail, magnetic disks, videos, photographs, audio and verbal information, notes and information, including samples, herein jointly referred to as "DATA" created or furnished by EMPLOYEE or disclosed to EMPLOYEE shall remain the exclusive property of the COMPANY and shall be used solely for COMPANY business.

(b) Anti-Solicitation. EMPLOYEE promises and agrees that during the term of this AGREEMENT, EMPLOYEE will not influence, or attempt to influence customers or supplies of the COMPANY, or any of its present or future subsidiaries or affiliates, either directly or indirectly, to divert their business to any individual, partnership, firm, corporation, or other entity then in competition with the business of the COMPANY, or any subsidiary or affiliate of the COMPANY.

(c) Non-Compete/Non-Employment with Competitors. This AGREEMENT is given as part of the consideration in exchange for the sale of OUTLAND DESIGN TECHNOLOGIES, INC. to COMPANY, of which EMPLOYEE is a significant stockholder. During the term of this AGREEMENT and for the twelve (12) month period commencing on the termination date, EMPLOYEE promises and agrees that he will not directly or indirectly compete with the COMPANY or any of its products or services; will not engage in any form of employment or consulting with any competitors of the COMPANY; and that these covenants apply at all times during the term of employment.

(d) Consequences of Breach. In the event EMPLOYEE violates any of the provisions of Paragraph 8(a), (b) or (c) the COMPANY shall have the right to pursue all legal, equitable and other relief available to COMPANY and all rights of EMPLOYEE to compensation and EMPLOYEE benefits under this contract shall be terminated.

Either party may change such party's address for notices by Notice duly given pursuant hereto. In the event of EMPLOYEE's termination and physical absence from the business office of COMPANY, EMPLOYEE's last known home address shall be the proper address for all Notices unless changed by written notice duly given pursuant hereto.

9. **NOTICES.** All Notices and other communications under this AGREEMENT shall be in writing and shall be given by facsimile or first class mail, certified or registered with return receipt requested, and shall be deemed to have been duly given three (3) days after mailing or twenty-four (24) hours after transmission by facsimile to the respective persons named below:

IF TO THE COMPANY: Terry Martin, President
OUTLAND TECHNOLOGIES, INC.
19200 Von Karman Avenue, Suite 600
Irvine, CA 92612
(949) 622-5420 - Tel.
(949) 622-5530 - Fax

IF TO THE EMPLOYEE: Terry Martin
OUTLAND TECHNOLOGIES, INC.
19200 Von Karman Avenue, Suite 600
Irvine, CA 92612
(949) 622-5420 - Tel.
(949) 622-5530 - Fax

COMPANY and EMPLOYEE'S address effective May 1, 2001 will be 17032 Murphy, Irvine, California. Either party may change such party's address for notices by Notice duly given pursuant hereto. In the event of EMPLOYEE's termination and physical absence from the business office of COMPANY, EMPLOYEE's last known home address shall be the proper address for all Notices unless changed by written notice duly given pursuant hereto.

10. **ALTERNATIVE DISPUTE RESOLUTION.** In the event of a dispute between COMPANY and EMPLOYEE, the dispute shall be settled by the following method of Alternative Dispute Resolution. This shall be the exclusive method for determining all legal and equitable dispute between the parties and both COMPANY and EMPLOYEE knowingly, intelligently and voluntarily waive the right to a jury trial, court trial, and the right to appeal except in rare circumstances where the right to appeal from a binding arbitration award exists as a matter of law. The order of dispute resolution shall be as follows: (i) executive parties with decision making abilities shall meet face to face to identify and resolve all disputed issues. In the event the dispute or disputes are not resolved at the face to face meeting, the disputes shall proceed to the next level; (ii) the COMPANY shall pay for an independent mediator to facilitate and help the parties negotiate a dispute for a maximum of a four (4) hour period in accordance with the rules of the American Arbitration Association. In the event the dispute or disputes are not resolved by the voluntary mediation process, final resolution involve the remaining disputed issues shall be resolved at the third level; (iii) all issues not resolved at mediation shall be resolved by binding arbitration in accordance with the rules of the American Arbitration Association. The arbitration hearing shall not exceed eight (8) hours unless the Arbitrator approves time in excess of eight (8) hours. Each party shall advance an equal share of the cost of the arbitration and the filing fees, and cost of the arbitrator shall become an item of costs. The prevailing party shall be entitled to recover said costs.

11. **EFFECT OF PRIOR AGREEMENTS.** This AGREEMENT terminates and supersedes any and all prior agreements and understandings between the parties with respect to employment, the COMPANY and with respect to the compensation of the EMPLOYEE by the COMPANY from and after the effective date of this AGREEMENT.

12. **ASSIGNMENT AND SUCCESSORS.** This AGREEMENT is personal in its nature and neither of the parties shall, without the consent of the other, assign or transfer this AGREEMENT or any rights or obligations hereunder; provided that, in the event of a merger, consolidation, transfer, or sale of all or substantially all the assets of the COMPANY with or to any other individual or entity, this AGREEMENT shall be binding upon and inure to the benefit of such successors, and such successors shall discharge and perform all of the promises, covenants, duties and obligations of the COMPANY as set forth in this AGREEMENT.

13. **GOVERNING LAW.** This AGREEMENT and the legal relations thus created between the parties hereto shall be governed by and construed under and in accordance with the laws of the State of California subject to the rules and regulations of the American Arbitration Association for binding resolution of disputes and venue shall be in the County of Orange.

14. **ENTIRE AGREEMENT; HEADINGS.** This AGREEMENT embodies the entire AGREEMENT of the parties respecting all matters within its scope and may be modified only in a writing signed by both parties. Section headings in this AGREEMENT are intended for convenience of reference to the general subject matter only, and shall not constitute a part of this

AGREEMENT for any other purpose. Both parties agree that they shall not, at any time, contend that they did not read the Paragraph because of the content of the Section heading.

15. **WAIVER AND MODIFICATION.** Failure to insist upon strict compliance with any of the terms, covenants, or conditions hereof shall not be deemed a waiver of such term, covenant, or condition, nor shall any waiver or relinquishment of or failure to insist upon strict compliance with any right or power hereunder, at any one or more times, be deemed a waiver or relinquishment of such right or power at any other time or times. This AGREEMENT shall not be modified in any manner except by a writing executed by each party hereto.

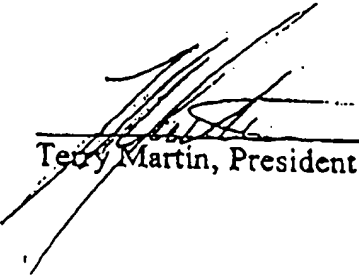
16. **SEVERABILITY.** In the event that a court of competent jurisdiction or arbitrator determines that any portion of this AGREEMENT is in violation of any statute or public policy, the terms necessary to comply with any such statute or public policy shall be implied as a matter of law into this AGREEMENT, and this AGREEMENT shall be reformed to comply with said statute and/or public policy. All portions of this AGREEMENT that do not violate any statute or public policy shall continue in full force and effect. Further, any arbitration order or court order striking any portion of this AGREEMENT shall modify the stricken terms, as narrowly as possible, to give as much effect as possible to the intentions of the parties under this AGREEMENT at the time this AGREEMENT was entered into.

17. **INDEMNIFICATION.** The COMPANY shall indemnify and hold EMPLOYEE harmless to the maximum extent permitted by Section 317 of the California Corporations Code and its successor's statutes and other applicable laws.

18. **COUNTER-PARTS.** This AGREEMENT may be executed in several counter-parts, each of which shall be deemed to be an original but all of which together will constitute one (1) and the same instrument.

19. **REVIEW BY LEGAL COUNSEL.** Both parties have been advised to seek independent legal advice for purposes of reviewing this AGREEMENT, explaining the benefits and burdens of the consideration bargain for, and the legal effect of each and every term of this AGREEMENT. COMPANY further acknowledges that it has been advised by EMPLOYEE, in the capacity of legal counsel, to seek independent legal advice before signing this AGREEMENT. Neither the COMPANY nor EMPLOYEE shall be required to disclose the content of any attorney-client communications, and each party expressly warrants that they have received, understood and acted upon the foregoing advice.

IN WITNESS WHEREOF, the Board of Directors of COMPANY has directed this AGREEMENT to be executed by its duly authorized Sr. Vice President and General Counsel, and the EMPLOYEE has hereunto signed this AGREEMENT as the date first written above, in the City of Irvine, State of California.



Terry Martin, President and CEO

OUTLAND TECHNOLOGIES, INC. and
OUTLAND TECHNOLOGIES (USA), INC.


By: _____

Michael J. Lancaster, Sr. Vice
President and General Counsel

EMPLOYMENT AGREEMENT

This Employment Agreement ("AGREEMENT") entered into as of the 1st day of May, 2001, effective upon approval by the Board of Directors ("EFFECTIVE DATE"), is entered into by and between Craig Forhan (the "EMPLOYEE") and Outland Technologies, Inc., a body corporate having its registered office in the province of Alberta, Canada ("OUTLAND CANADA"), by and through its wholly owned subsidiary, Outland Technologies (USA), Inc., a Washington corporation (the "COMPANY").

The COMPANY and prospective EMPLOYEE desire to establish an Employment Agreement in the capacity herein described, on the terms and conditions and subject to the rights of termination hereinafter set forth, and EMPLOYEE is willing to accept such employment on such terms and conditions.

In consideration of the mutual agreements hereinafter set forth, the EMPLOYEE and the COMPANY have agreed and do hereby confirm their agreement as follows:

1. **EMPLOYMENT AS CHIEF FINANCIAL OFFICER.** The COMPANY does hereby employ, engage, and hire EMPLOYEE as Chief Financial Officer for the COMPANY, and the EMPLOYEE does hereby accept and agree to such hiring, engagement and employment. The EMPLOYEE'S duties during the employment period (defined below) shall be the duties set forth in this Agreement, shall not include any authority to enter into contracts, hire, terminate or bind the company or any duties regarding the operations of the COMPANY except as authorized by the President, Sr. Vice President/General Counsel or Board of Directors. The duties of the Chief Financial Officer of Outland Technologies (USA), Inc. shall include acting as the Chief Accounting Officer both as to private and confidential accountings, and public filings including 10K, 10Q's, annual reports and all other accounting functions which may be directed by the President, Sr. Vice President/General Counsel or Board of Directors. The EMPLOYEE shall devote his full-time energy and skill to the performance of his duties for the COMPANY and for the benefit of the COMPANY, reasonable vacations authorized by the COMPANY'S Board of Directors, and reasonable absences because of illness excepted; and shall exercise due diligence and care in the performance of his duties for the COMPANY under this AGREEMENT.

2. **TERM OF AGREEMENT.** The term ("TERM") of this AGREEMENT shall commence on the effective date, shall continue for a period of one (1) year, and at EMPLOYEE'S option, shall be automatically renewed thereafter for an additional one (1) year on terms renegotiated by COMPANY and EMPLOYEE, unless terminated in writing as set forth in this AGREEMENT. This AGREEMENT commences on the effective date and ends on the date of termination of the EMPLOYEE'S employment ("TERMINATION DATE"), under this or any successor agreement and shall be referred to as the "EMPLOYMENT PERIOD". The term shall renew automatically thereafter for one (1) year terms unless sooner terminated as provided for in this AGREEMENT.

3. COMPENSATION.

(a) The COMPANY shall pay the EMPLOYEE, and the EMPLOYEE agrees to accept from the COMPANY, in full payment for all of his services to be performed for the COMPANY, compensation in the total annual sum set forth below, subject to the terms and conditions of this AGREEMENT and payable bi-monthly or at such other times or times as the EMPLOYEE and the COMPANY shall mutually agree:

POSITION:	Chief Financial Officer of Outland Technologies, Inc. and Outland Technologies (USA), Inc.
ANNUAL BASE SALARY:	150,000 \$120,000 with annual cost of living increases of five percent (5%) per year.
TERM:	One (1) year, effective immediately.
PROFIT SHARING:	Profit Sharing per Company policy when adopted.
STOCK:	5,000 common shares of Outland Technologies, Inc., employee to pay all taxes.
SEVERANCE AGREEMENT:	Six (6) months. This will include annual base salary and medical benefits for six months.
INSURANCE PACKAGE:	Company medical (PPO) plan for employee and family.
LIFE INSURANCE:	Per company policy, if any.
HOLIDAYS:	Per company policy.
VACATION:	Two (2) weeks per year. Three (3) weeks per year after three (3) years of service.
RETIREMENT PLAN:	401K retirement plan or equivalent when adopted.
COMPANY EXPENSES:	Car allowance per Company policy, cell phone and reimbursement of business expenses per Company policy, including Company credit card.

ADDITIONAL CPA EXPENSES:

Annual CPA dues; membership in American Certified Public Accountant's Association and Value Analysts Association; and continuing education expenses to maintain CPA license.

(b) EMPLOYEE and COMPANY stipulate and agree that all intellectual property, ideas, concepts, inventions and ventures for profit created by EMPLOYEE during the term of his employment are made for hire for COMPANY and are hereby assigned to and exclusively owned by the COMPANY. This is a material covenant without which the COMPANY would not enter into this AGREEMENT;

4. **FRINGE BENEFITS.** EMPLOYEE shall be entitled to participate in any benefit programs adopted from time to time by the COMPANY for the benefit of its employees, and EMPLOYEE shall be entitled to receive such other fringe benefits as may be granted to him from time to time by the COMPANY's Board of Directors.

(a) **Benefit Plans.** EMPLOYEE shall be entitled to participate in any benefit plans and employee benefits available to other Employees of the COMPANY, subject to any restrictions (including waiting) specified in such Plans. COMPANY has a present 401K plan.
Does not have

(b) **Vacation.** EMPLOYEE shall be entitled to two (2) weeks of paid vacation per calendar year for years one and two of employment by the COMPANY; three (3) weeks per calendar year for years three or more of service (3+); with such vacation to be scheduled and taken in accordance with the COMPANY's standard Vacation Policies, one week at a time.
Exemptive vacation takes place

5. **BUSINESS EXPENSES.** The COMPANY shall reimburse the EMPLOYEE for any and all necessary, customary, and usual expense, properly receipted in accordance with COMPANY policies, incurred by EMPLOYEE on behalf of the COMPANY.

6. **TERMINATION OF EMPLOYEE'S EMPLOYMENT.**

(a) **Death.** If the EMPLOYEE dies while employed by the COMPANY, his employment shall immediately terminate. The COMPANY's obligation to pay the EMPLOYEE's Base Monthly Compensation shall cease as of the date of EMPLOYEE's death. However, EMPLOYEE'S spouse shall receive 50% of EMPLOYEE'S base pay for six (6) months. Thereafter, EMPLOYEE's beneficiaries, trustees, or estates shall receive benefits in accordance with the COMPANY's insurance and other applicable programs and plans then in effect.

(b) **Disability.** If, as a result of EMPLOYEE's mental or physical incapacity, EMPLOYEE shall be unable to perform the services for the COMPANY contemplated by this AGREEMENT in the manner he previously performed during a period of one hundred twenty (120) business days in any consecutive seven (7) month period ("disability"), EMPLOYEE's employment may be terminated by the COMPANY for disability. During any period prior to such termination during which EMPLOYEE is absent from the full-time performance of EMPLOYEE's duties with the COMPANY due to disability, the COMPANY shall continue to pay EMPLOYEE's Base

Monthly Compensation at the rate in effect at the commencement of such period of disability. Any such payments made to EMPLOYMENT shall be reduced by amounts received from disability insurance obtained or provided by the COMPANY. Subsequent to the termination provided for in Section 6(b), EMPLOYEE's benefits shall be determined under the COMPANY's retirement, insurance, and other compensation programs then in effect in accordance with the terms of such programs.

(c) Termination by the COMPANY. The COMPANY may terminate EMPLOYEE's employment under this AGREEMENT without cause upon thirty (30) days written notice or for "cause" at any time prior to the expiration of the term of the AGREEMENT only upon the occurrence of any one or more of the following events: (i) the material breach of this AGREEMENT by EMPLOYEE, including repeated willful neglect of EMPLOYEE's duties. However, physical presence at the business location shall not be considered neglect of EMPLOYEE'S duties or lack of diligence unless specifically directed by the President of the COMPANY. EMPLOYEE's material lack of diligence and attention in performing services required by this Agreement, including minimum performance requirements, or EMPLOYEE's willful failure to implement or adhere to policies established by, or directives of, the COMPANY's President; (ii) Conduct of a criminal nature that may have an adverse impact on the COMPANY's reputation and standing in the industry and community; or (iii) fraudulent conduct in connection with the business affairs of the COMPANY, regardless of whether said conduct is designed to defraud the COMPANY or others.

In the event of termination for cause, the COMPANY's obligation to pay EMPLOYEE shall cease as of the termination date. If EMPLOYEE's employment is terminated for cause, EMPLOYEE's employment may be terminated immediately without any advance written notice. No compensation in any form shall be payable to EMPLOYEE upon EMPLOYEE'S termination for cause.

(d) Termination by the EMPLOYEE for Good Reason. The EMPLOYEE shall have the right to terminate this AGREEMENT for Good Reason. For purposes of this AGREEMENT, "Good Reason" shall mean the occurrence without the EMPLOYEE's prior written consent, of any one or more of the following events: (i) termination or reassignment of EMPLOYEE into any position other than Chief Financial Officer or Controller; (ii) the assignment to the EMPLOYEE of any duties that are materially inconsistent with, or reflect a material continuing reduction of the powers and responsibilities of EMPLOYEE, or a change of the EMPLOYEE'S reporting responsibilities as set forth in this Agreement, or material improper interference with the EMPLOYEE's ability to materially perform the duties and responsibilities set forth in this Agreement.

The EMPLOYEE agrees to provide the COMPANY with thirty (30) days prior written notice of any termination for Good Reason, during which thirty (30) day period the COMPANY shall have the right to cure the circumstances giving rise to the Good Reason stated in such Notice. In the event of termination for Good Reason, the EMPLOYEE shall receive the compensation pursuant to the provisions of Section 7 hereof.

(e) Employee Voluntarily Quits. In the event EMPLOYEE voluntarily quits, COMPANY shall owe no additional consideration to EMPLOYEE and all benefits shall be terminated effective immediately.

7. **COMPENSATION UPON TERMINATION BY THE COMPANY OTHER THAN FOR CAUSE OR BY THE EMPLOYEE FOR GOOD REASON.** If the EMPLOYEES employment shall terminate (i) by election of the COMPANY other than for cause or (ii) by the election of EMPLOYEE for Good Reason, the EMPLOYEE shall be entitled to the following benefits:

(a) Payment of unpaid Base Monthly Compensation. Payment of annual base salary, annual bonus (pro rata) and medical benefits for eighteen (18) months. Said severance compensation shall be paid to the EMPLOYEE by COMPANY, in a lump sum, within five (5) days of the termination date.

(b) Presumption of Paragraph 7 - Termination. All terminations shall be presumed to be pursuant to this Paragraph 7 until proven otherwise by competent admissible evidence.

8. **NON-COMPETITION, CONFIDENTIALITY, TRADE SECRET AND PRIVACY PROVISIONS.**

(a) Right to Company Materials. EMPLOYEE agrees that all styles and all COMPANY DATA, designs, customer lists, materials, books, files, reports, correspondence, records, and other documents (COMPANY materials) used, prepared, or made available to EMPLOYEE, shall be and shall remain the property of the COMPANY. EMPLOYEE agrees that this information is confidential, represents protected trade secrets of COMPANY and EMPLOYEE shall keep the information confidential. Upon the termination of employment or the expiration of this AGREEMENT, all COMPANY materials shall be returned immediately to the COMPANY, and EMPLOYEE shall not make or retain any copies thereof nor shall EMPLOYEE disclose to any other person or use said information for profit nor to interfere with the present and prospective economic advantage of COMPANY.

(i) Company Data Defined. All proprietary technology, patent information, trade secrets, confidential information, formulas, patterns, devices, compilations of information, drawings, computer files, e-mail, magnetic disks, videos, photographs, audio and verbal information, notes and information, including samples, herein jointly referred to as "DATA" created or furnished by EMPLOYEE or disclosed to EMPLOYEE shall remain the exclusive property of the COMPANY and shall be used solely for COMPANY business.

(b) Anti-Solicitation. EMPLOYEE promises and agrees that during the term of this AGREEMENT, EMPLOYEE will not influence, or attempt to influence customers or supplies of the COMPANY, or any of its present or future subsidiaries or affiliates, either directly or indirectly, to divert their business to any individual, partnership, firm, corporation, or other entity then in competition with the business of the COMPANY, or any subsidiary or affiliate of the COMPANY.

(c) Soliciting Employees. During the term of this AGREEMENT and for the twelve-month period commencing on the Termination Date, EMPLOYEE promises and agrees that he will not directly or indirectly solicit any of the COMPANY's employees to work for any businesses, individual, partnership, firm, corporation, or other entity then in competition with the business of the COMPANY or any subsidiary or affiliate with the COMPANY.

(d) Non-Compete/Non-Employment with Competitors. This AGREEMENT is given as part of the consideration in exchange for the sale of OUTLAND DESIGN TECHNOLOGIES, INC. to COMPANY, of which EMPLOYEE is a significant stockholder. During the term of this AGREEMENT and for the twelve (12) month period commencing on the termination date, EMPLOYEE promises and agrees that he will not directly or indirectly compete with the COMPANY or any of its products or services; will not engage in any form of employment or consulting with any competitors of the COMPANY; and that these covenants apply at all times during the term of employment.

(e) Consequences of Breach. In the event EMPLOYEE violates any of the provisions of Paragraph 8(a), (b), (c) or (d), the COMPANY shall have the right to pursue all legal, equitable and other relief available to COMPANY and all rights of EMPLOYEE to compensation and EMPLOYEE benefits under this contract shall be terminated.

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IF TO THE COMPANY: Terry Martin, President
OUTLAND TECHNOLOGIES (USA), INC.
17032 Murphy Avenue
Irvine, CA 92614
(949) 222-0662 - Tel.
(949) 222-0652 - Fax

IF TO THE EMPLOYEE: Craig Forhan
c/o OUTLAND TECHNOLOGIES (USA), INC.
17032 Murphy Avenue
Irvine, CA 92614
(949) 222-0662 - Tel.
(949) 222-0652 - Fax

Either party may change such party's address for notices by Notice duly given pursuant hereto. In the event of EMPLOYEE's termination and physical absence from the business office of COMPANY, EMPLOYEE's last known home address shall be the proper address for all Notices unless changed by written notice duly given pursuant hereto.

10. ALTERNATIVE DISPUTE RESOLUTION. In the event of a dispute between COMPANY and EMPLOYEE, the dispute shall be settled by the following method of Alternative Dispute Resolution. This shall be the exclusive method for determining all legal and equitable dispute between the parties and both COMPANY and EMPLOYEE knowingly, intelligently and voluntarily waive the right to a jury trial, court trial, and the right to appeal except in rare circumstances where the right to appeal from a binding arbitration award exists as a matter of law. The order of dispute resolution shall be as follows: (i) executive parties with decision making abilities shall meet face to face to identify and resolve all disputed issues. In the event the dispute or disputes are not resolved at the face to face meeting, the disputes shall proceed to the next level; (ii) the COMPANY shall pay for an independent mediator to facilitate and help the parties negotiate a dispute for a maximum of a four (4) hour period in accordance with the rules of the American Arbitration Association. In the event the dispute or disputes are not resolved by the voluntary mediation process, final resolution involve the remaining disputed issues shall be resolved at the third level; (iii) all issues not resolved at mediation shall be resolved by binding arbitration in accordance with the rules of the American Arbitration Association. The arbitration hearing shall not exceed eight (8) hours unless the Arbitrator approves time in excess of eight (8) hours. Each party shall advance an equal share of the cost of the arbitration and the filing fees, and cost of the arbitrator shall become an item of costs. The prevailing party shall be entitled to recover said costs.

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13. GOVERNING LAW. This AGREEMENT and the legal relations thus created between the parties hereto shall be governed by and construed under and in accordance with the laws of the State of California subject to the rules and regulations of the American Arbitration Association for binding resolution of disputes and venue shall be in the County of Orange.

14. ENTIRE AGREEMENT; HEADINGS. This AGREEMENT embodies the entire AGREEMENT of the parties respecting all matters within its scope and may be modified only in a writing signed by both parties. Section headings in this AGREEMENT are intended for convenience of reference to the general subject matter only, and shall not constitute a part of this AGREEMENT for any other purpose. Both parties agree that they shall not, at any time, contend

that they did not read the Paragraph because of the content of the Section heading.

15. **WAIVER AND MODIFICATION.** Failure to insist upon strict compliance with any of the terms, covenants, or conditions hereof shall not be deemed a waiver of such term, covenant, or condition, nor shall any waiver or relinquishment of or failure to insist upon strict compliance with any right or power hereunder, at any one or more times, be deemed a waiver or relinquishment of such right or power at any other time or times. This AGREEMENT shall not be modified in any manner except by a writing executed by each party hereto.

16. **SEVERABILITY.** In the event that a court of competent jurisdiction or arbitrator determines that any portion of this AGREEMENT is in violation of any statute or public policy, the terms necessary to comply with any such statute or public policy shall be implied as a matter of law into this AGREEMENT, and this AGREEMENT shall be reformed to comply with said statute and/or public policy. All portions of this AGREEMENT that do not violate any statute or public policy shall continue in full force and effect. Further, any arbitration order or court order striking any portion of this AGREEMENT shall modify the stricken terms, as narrowly as possible, to give as much effect as possible to the intentions of the parties under this AGREEMENT at the time this AGREEMENT was entered into.

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19. **REVIEW BY LEGAL COUNSEL.** Both parties have been advised to seek independent legal advice for purposes of reviewing this AGREEMENT, explaining the benefits and burdens of the consideration bargain for, and the legal effect of each and every term of this AGREEMENT. COMPANY further acknowledges that it has been advised by EMPLOYEE, in the capacity of legal counsel, to seek independent legal advice before signing this AGREEMENT. Neither the COMPANY nor EMPLOYEE shall be required to disclose the content of any attorney-client communications, and each party expressly warrants that they have received, understood and acted upon the foregoing advice.

IN WITNESS WHEREOF, the COMPANY has caused this AGREEMENT to be executed by its duly authorized Director and Chief Executive Officer, and the EMPLOYEE has hereunto signed this AGREEMENT as the date first written above, in the City of Irvine, State of California.

OUTLAND TECHNOLOGIES, INC.
OUTLAND TECHNOLOGIES (USA), INC.

CRAIG FORHAN, Chief Financial
Officer

By: Terry Martin, President and CEO

★ MAY - 2 2002 ★

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OUTLAND TECHNOLOGIES (USA), Inc., a)
Washington corporation; OUTLAND)
DESIGN TECHNOLOGIES, INC., a)
Washington corporation; UNICK)
INVESTMENTS, LLC, a Washington limited)
liability company; TERRY MARTIN, as)
director of Outland Technologies (USA), Inc.,)
JAMES IRELAND, as a director of Outland)
Technologies (USA) Inc., CRAIG FORHAN,)
as a director of Outland Technologies (USA),)
Inc.; STEVE FRYER, as a director of Outland)
Technologies (USA), Inc.; and JAMES)
KLASSEN, as a director of Outland)
Technologies (USA), Inc.,)

Plaintiffs,

vs.

OUTLAND TECHNOLOGIES, INC., an)
Alberta Canada corporation; TERRY)
KNIGHT; KEN BELL; and GARRY)
MIHAICHUK,)

Defendants.

NO. CV02-0229Z

**DEFENDANTS' MOTION FOR
PRELIMINARY INJUNCTION**

NOTE ON MOTION CALENDAR:
MAY 17, 2002

ORAL ARGUMENT REQUESTED

RECEIVED
JUL 19 2002
OFFICE OF PETITIONS

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I. INTRODUCTION

This case involves the intellectual property rights to certain valuable technology, namely the "D-2 Technology," a rotary positive displacement device with potential applications in a broad spectrum of industries. The D-2 Technology is similar to, and competitive with, another rotary positive displacement device, the "CvR™ Technology." Outland Technologies (USA), Inc. ("Outland USA"), which is wholly owned by defendant Outland Technologies, Inc. ("Outland Canada") has patents relating to the CvR™ Technology, and also has filed a patent application relating to the D-2 Technology.

Plaintiff James Klassen, who invented both the CvR™ Technology and the D-2 Technology, *also* has a patent application pending for the D-2 Technology (in his own name), even though Outland USA (the employer for whom Mr. Klassen invented the D-2 Technology) is entitled to all patent rights. Outland USA almost certainly will prevail in this action and obtain the rights to any patent issued to Mr. Klassen, *but this will be too late*. Terry Martin, Mr. Klassen's cousin and the former president of Outland USA, has indicated his and Mr. Klassen's intention to sell the patent rights to a third party. Such a sale would cut off Outland USA's rights to the patent, and make any subsequent, court-ordered assignment from Mr. Klassen to Outland USA void. Even if Mr. Klassen is unable to sell the patent rights, he may compromise the value of the patent through the patent prosecution process, including narrowing the scope of the patent so that he can design around any patent issued (and later assigned to Outland USA as a result of this lawsuit).

To prevent the total loss of Outland USA's patent rights, and consequent irreparable harm to Outland Canada, the Court now should preliminarily enjoin Mr. Klassen, and anyone acting in concert with him or on his behalf, from attempting to sell or license the D-2 Technology, or continuing to prosecute his patent application, pending resolution of this lawsuit.

II. FACTS

Based on the Complaint for Declaratory Judgment filed by Plaintiffs ("Complaint") and the First Amended Answer, Affirmative Defenses, and Counterclaims ("Counterclaims") filed by Defendants, this case is going to involve many complicated legal and factual disputes. Plaintiffs seek judicial determination of whether certain actions taken by Outland USA and Outland Canada were authorized and lawful, of the rights and duties of the plaintiffs, and as to which individuals are the lawful directors and officers of Outland USA. Complaint at ¶¶34-39. Defendants also seek declaratory relief, and have asserted claims against Plaintiffs for, inter alia, breach of fiduciary duty, misappropriation of trade secrets, conversion, and fraud. Counterclaims at ¶¶41-100. However, this section is limited to essential background information and those facts which are relevant to this very narrow, but important, motion. The facts contained in this section are based on the Declarations of Ken Bell ("Bell Decl.") and Michael Hughes ("Hughes Decl.").

In the mid-1990s, plaintiff James Klassen, an inventor, created T&J Enterprises with his cousin, plaintiff Terry Martin. Bell Decl. at ¶ 3. Subsequently, Messrs. Klassen and Martin also formed Outland Design Technologies, Inc. ("Outland Design"), which was majority-owned by T&J Enterprises. Id. at ¶ 3.

In 1997, Outland Design and EcoTech Canada Ltd. ("EcoTech") (whose successor in interest is 718844 Alberta Inc.) created Outland Hydraulics, Inc., which in 1998 was renamed Outland Technologies (USA), Inc. ("Outland USA"). Id. at ¶ 5. EcoTech was issued 50% of the shares in Outland USA, in return for its contribution of \$300,000 (US). Id. Outland Design also was issued 50% of the shares in Outland USA, in return for its contribution of technology, including all rights to the CVR™ Technology, and all existing or future hydraulic technology invented by Outland Design (such as the D-2 Technology). Id.

1 In 1998, Outland Design and EcoTech also created Outland Technologies, Inc. ("Outland
2 Canada") to market and license the Outland USA technology. Id. at ¶ 7. Like Outland USA,
3 Outland Canada was 50% owned by Outland Design and 50% owned by EcoTech. Id.

4 In order to raise additional funding, Messrs. Klassen and Martin brought in a new
5 management team (the "Canadian Management") in 2000. Id. at ¶ 9 The Canadian Management
6 included defendant Ken Bell, and later defendants Terry Knight and Garry Mihaichuk. Id. The
7 Canadian Management began raising funding, and additional Outland Canada stock was issued.
8 Id. Thus, Messrs. Klassen and Martin (through Outland Design) owned slightly less than 50% of
9 the outstanding shares.

10 In 2000, Outland Canada purchased all of Outland Design's and all of EcoTech's shares
11 in Outland USA for \$5,000,000 (US) (including \$2,500,000 to Messrs. Klassen and Martin
12 through Outland Design). Id. at ¶ 11.

13 From April 2000 to May 2001, the Canadian Management raised more than \$15,000,000
14 (CAN) for Outland Canada. Id. at ¶ 12. These funds were distributed to Outland USA on an as-
15 needed basis. Id.

16 Mr. Klassen worked every day at Outland USA at the direction of Outland USA
17 management. Id. at ¶ 15. He was assisted in his inventive work by other Outland USA
18 employees. Id. All of his equipment and supplies were provided by Outland USA. Id. He was
19 paid with Outland USA funds (through Outland Design, to avoid U.S. visa problems which
20 might have arisen if there were a change in his employment). Id. In August 2000, Mr. Klassen's
21 cousin, then-president Terry Martin, created an organizational chart showing Mr. Klassen as an
22 Outland USA employee. Id. at ¶ 14.

23 In 2000, while an Outland USA employee, Mr. Klassen invented the D-2 Technology,
24 which is similar to and competitive with the CVR™ Technology. Id. at ¶¶ 13 and 18. Messrs.
25 Klassen and Martin first concealed the invention of the D-2 Technology, then denied that it was

1 competitive with the CVR™ Technology, then attempted to mislead the corporation into
2 purchasing the technology (which it already had all rights to). Id. at ¶¶ 16-23. Mr. Martin
3 indicated that if Outland USA did not buy the D-2 Technology, it would be sold to a third party.
4 Id. at ¶ 23.

5 Outland Canada filed a non-provisional patent application for the D-2 Technology on
6 February 7, 2002. Id. at ¶ 26. (A provisional patent application already had been filed.) Outland
7 USA management asked Mr. Klassen to execute an assignment of the D-2 Technology that
8 would confirm Outland USA's ownership of the D-2 Technology. Id. Mr. Klassen refused to
9 sign the assignment, and advised Outland USA management that he had filed his own non-
10 provisional patent application. Id.

11 **III. ARGUMENT**

12 **A. The Preliminary Injunction Standard**

13 A preliminary injunction should be granted where the moving party shows "either '(1) a
14 combination of probable success on the merits and the possibility of irreparable injury, or (2) that
15 serious questions are raised and the balance of hardships tips sharply in its favor.'" Citizens
16 Alliance to Protect our Wetlands v. Wynn, 908 F. Supp. 825, 829 (W.D. Wash. 1995) (quoting
17 Big Country Foods, Inc. v. Bd. of Educ., 868 F.2d 1085, 1088 (9th Cir. 1989)). "Under this
18 formula, the degree of irreparable injury required increases as the probability of success on the
19 merits decreases." Id. Injunctions are particularly appropriate in cases involving patent rights.
20 See 35 U.S.C. § 283 (specifically providing jurisdiction to grant an injunction "to prevent the
21 violation of any right secured by patent").

22 **B. Outland Canada Is Likely To Succeed On The Merits**

23 Outland USA, wholly owned by Outland Canada, is entitled all D-2 Technology patent
24 rights because (1) Mr. Klassen has a fiduciary duty to assign the D-2 Technology patent to
25

1 Outland USA, and (2) Mr. Klassen was an employee of Outland USA hired to invent, and an
2 employee that is hired to invent is obligated to assign his inventions to his employer.

3 **1. Mr. Klassen Has A Fiduciary Duty To Assign The D-2 Technology Patent**

4 “[W]here the inventor is more than an employee and occupies a special relationship of
5 trust and confidence to the business, courts under certain circumstances have held it inequitable
6 for the individual to retain a title which more properly belongs to the company.” Kennedy v.
7 Wright, 676 F. Supp. 888, 892 (C.D.Ill. 1988). See also Great Lakes Press Corp. v. Froom, 695
8 F. Supp. 1440, 1446 (W.D.N.Y. 1987); LeFiell v. United States, 162 Ct.Cl. 865 (1963); Dowse
9 v. Federal Rubber Co., 254 F. 308, 315 (N.D.Ill. 1918). Mr. Klassen bears this obligation in this
10 case.

11 Mr. Klassen and others created Outland USA for the purpose of commercializing his
12 hydraulic inventions. Bell Decl. at ¶ 4. Mr. Klassen was the driving inventive force behind the
13 business. Together with his cousin, Terry Martin, Mr. Klassen led the Canadian Management to
14 believe that all of Mr. Klassen’s inventive work on hydraulic technologies was for the benefit of
15 Outland USA. Bell Decl. at ¶ 17. Given the special trust and confidence placed in Mr. Klassen
16 by Outland USA, it would be inequitable for Mr. Klassen to retain a patent “which more properly
17 belongs to the company.” Kennedy, 676 F. Supp. at 892. This is especially true where the
18 patents are “manifestly important to the well-being of the company.” Id. at 893.

19 Because the competing CvR™ Technology and D-2 Technology are at the heart of
20 Outland USA’s business, and given the special relationship between Mr. Klassen and Outland
21 USA, Mr. Klassen has a fiduciary duty to assign the D-2 Technology patent to Outland USA.

22 **2. Mr. Klassen Is Obligated To Assign The D-2 Technology Patent As An**
23 **Employee Hired To Invent**

24 Even if Mr. Klassen does not owe a fiduciary duty to Outland USA to assign the D-2
25 Technology patent, he still is obligated to assign the patent because (a) he was an Outland USA
employee; (b) he was hired to invent; and (c) an employee hired to invent is obligated to assign

1 the inventions to his employer.

2 **a. Mr. Klassen Was Employed By Outland USA**

3 "[T]he chief, and most decisive, factor in determining whether the relationship is that of
4 employer and employee ... is the right of control over the work or thing to be done." Miles v.
5 Pound Motor Co., 10 Wn.2d 492, 506, 117 P.2d 179 (1941) (distinguishing employees from
6 independent contractors). Other considerations may include "the nature of the business, the time,
7 place, duration, quantity, and nature of the work performed, the skill and supervision required,
8 the furnishing of equipment, materials, and supplied, the payment of the necessary expenses, the
9 basis of compensation for the work, the right to hire and discharge assistants, and the right to
10 terminate the employment." Id. See also Marquis v. City of Spokane, 130 Wn.2d 97, 110, 922
11 P.2d 43 (1996); Sills v. Sorenson, 192 Wash. 318, 324, 73 P.2d 798 (1937); Hollingsworth v.
12 Robe Lumber Co., 182 Wash. 74, 77, 45 P.2d 614 (1935).

13 Outland USA controlled every aspect of Mr. Klassen's inventive work on the
14 technologies at issue here. As discussed in the facts section above, Mr. Klassen worked at
15 Outland USA, was managed by Outland USA, and was assisted by other Outland USA
16 employees. Bell Decl. at ¶ 15. He received all of his equipment and material from Outland
17 USA, and was paid by Outland USA (through Outland Design for purposes of his U.S. work
18 visa). Id. Looking to the "right of control" and all the other factors, the Court should determine
19 that Mr. Klassen was an employee of Outland USA at the time he invented the D-2 Technology,
20 even though no formal employment agreement was in place at that time.

21 **b. Mr. Klassen Was Employed To Invent Hydraulic Technologies**
22 **Like The D-2 Technology**

23 As illustrated by the description in the facts section of the relationships between the
24 numerous entities involved in this case, the whole purpose of Outland USA was to
25 commercialize Mr. Klassen's hydraulic technology inventions. Mr. Klassen was employed – and

1 paid – specifically to invent such hydraulic technologies, and did so, both in terms of
2 improvements to the CvR™ Technology as well as the D-2 Technology itself.

3 There are a number of evidentiary factors which may be considered in the determination
4 of whether an employment is “an employment to invent,” but “[t]he primary factor ... is the
5 specificity of the task assigned to the employee.” 8 Donald S. Chisum, Chisum on Patents §
6 22.03[2] at 22-30 (2001). Mr. Klassen’s task could not have been any more specific. Not only
7 was he employed and paid to invent hydraulic technologies, but the corporation itself was
8 formed specifically to raise funding and commercialize such inventions by Mr. Klassen. Bell
9 Decl. at ¶ 5. Thus, looking to “the specificity of the task assigned” and the other factors, the
10 Court should determine that Mr. Klassen was an employee hired and compensated to invent for
11 Outland USA.

12 **c. Mr. Klassen Is Obligated To Assign His Inventions to Outland**
13 **USA**

14 Disputes between employers and employees over ownership of patent rights have been
15 litigated in the courts of this country, including the United States Supreme Court, since at least
16 1843. See McClurg v. Kingsland, 42 U.S. (1 How.) 202, 11 L.Ed. 102 (1843). However, by
17 now it is “well-settled at the general level ... [that] an employer owns employee inventions if the
18 employee was specifically hired to exercise his or her ‘inventive faculties.’” Chisum, supra, §
19 22.03 at 22-11. This principle has been recognized at least since 1924, when the Supreme Court
20 decided the case of Standard Parts Co. v. Peck, 264 U.S. 52, 44 S.Ct. 239, 68 L.Ed. 560 (1924),
21 and held that an invention is the property “of him who engaged the services and paid for them.”
22 Standard Parts, 264 U.S. at 59-60. See also United States v. Dubilier Condenser Corp., 289 U.S.
23 178, 187-188, 53 S.Ct. 554, 77 L.Ed. 1114 (1933). This rule also makes a great deal of common
24 sense, as “[w]hen the purpose for employment thus focuses on invention, the employee has
25 received full compensation for his or her inventive work.” Teets v. Chromalloy Gas Turbine
Corp., 83 F.3d 403, 407 (Fed. Cir. 1996).

1 Mr. Klassen's obligation to assign his inventions under this rule arises pursuant to an
2 implied-in-fact contract between Mr. Klassen and Outland USA. See Teets, 83 F.3d at 407. An
3 implied-in-fact contract arises out of the parties' conduct, as opposed to one that arises out of a
4 written or oral agreement. See Plumbing Shop v. Pitts, 67 Wn.2d 514, 517, 408 P.2d 382 (1965).
5 Here, the core business of Outland USA towards which both Mr. Klassen, as its inventor
6 employee, and the Canadian Management directed their efforts, was the commercialization of the
7 hydraulic technologies invented by Mr. Klassen. Just as there is no dispute that the CvR™
8 Technology belongs to Outland USA, or that the CvR™ Technology improvements belong to
9 Outland USA, there should be no dispute that the D-2 Technology belongs to Outland USA.
10 Though Mr. Klassen now attempts to deny Outland USA the D-2 Technology, the conduct of
11 both parties described above created an implied-in-fact contract for him to assign *all* such
12 technologies. That was the whole point of employing him, and paying him, as an inventor.

13 Outland USA, "[h]aving given consideration for inventive services and having assumed
14 the risk that such services might not be successful, ... should receive as the benefit of the bargain
15 any resulting intellectual property rights." Chisum, supra, § 22.03[2] at 22-30. Mr. Klassen is
16 obligated to assign to Outland USA these intellectual property rights.

17 **C. Outland Canada Will Suffer Irreparable Injury If Mr. Klassen Is Not Enjoined**

18 **1. Mr. Klassen Should Be Enjoined From Selling Or Licensing The D-2
19 Technology**

20 To show irreparable injury, Outland Canada must demonstrate that its legal remedies are
21 inadequate. Ross-Simons of Warwick, Inc. v. Baccarat, Inc., 102 F.3d 12, 18 (1st Cir. 1996). In
22 other words, if Outland Canada "suffers a substantial injury that is not accurately measurable or
23 adequately compensable by money damages, irreparable harm is a natural sequel." Id. at 19.

24 The irreparable injury Outland Canada faces if Mr. Klassen is not enjoined from selling
25 or licensing the D-2 Technology is nothing less than the total loss of all its patent rights.
"[W]hen a legal title holder of a patent transfers his or her title to a third party purchaser for

1 value without notice of an outstanding equitable claim or title, the purchaser takes the entire
2 ownership of the patent, free of any prior equitable encumbrance.” Filmtec Corp. v. Allied-
3 Signal Inc., 939 F.2d 1568, 1573 (Fed. Cir. 1991) (citing Hendrie v. Sayles, 98 U.S. 546, 549, 25
4 L.Ed. 176 (1879)). Moreover, under 35 U.S.C. § 261, even an assignee of *legal* title will have
5 their rights cut off by a subsequent bona fide purchaser for value without notice of the prior
6 assignment, unless the earlier assignment is timely recorded. See 35 U.S.C. § 261; Filmtec
7 Corp., 939 F.2d at 1573-74.

8 Mr. Martin has indicated his intention, and Mr. Klassen’s, to sell the D-2 Technology to a
9 third party if it were not purchased by Outland USA. See Bell Decl. at ¶ 23. The D-2
10 technology – and the related CVR™ Technology – are at the heart of Outland USA’s business.
11 Unless Mr. Klassen is enjoined from so selling the patent, Outland USA’s equitable title will be
12 cut off. See Filmtec Corp., 939 F.2d at 1573. Even if the Court were to order Mr. Klassen to
13 assign legal title to Outland USA, that assignment would be moot. See Waterman v. MacKenzie,
14 138 U.S. 252, 259, 11 S.Ct. 334, 34 L.Ed. 923 (1891).

15 It is axiomatic that total elimination of a party’s patent rights are “not accurately
16 measurable or adequately compensable by money damages.” In fact, even in patent *infringement*
17 cases, “[i]rreparable harm is presumed when a clear showing of patent validity and infringement
18 has been made.” Amazon.com, Inc. v. Barnesandnoble.com, Inc., 239 F.3d 1343, 1350 (Fed.
19 Cir. 2001) (emphasis added). This rule “derives in part from the finite term of the patent grant,
20 for patent expiration is not suspended during litigation, and the passage of time can work
21 irremediable harm.” Id. (citation omitted). After all, “[a] patentee is *entitled* to exclude others
22 from the practice of its invention[.]” Bell & Howell Document Management Co. v. Altek
23 Systems, 132 F.3d 701, 708 (Fed. Cir. 1998) (emphasis added).

24 This analysis is even more applicable in the present case than it is in infringement cases.
25 Outland Canada faces the prospect not merely of its patent rights being infringed during the

1 pendency of the litigation, but instead faces the prospect of its patent rights being *cut off*
2 *altogether* during the pendency of the litigation.

3 **2. Mr. Klassen Should Be Enjoined From Prosecuting His Patent** 4 **Application**

5 Even if Mr. Klassen is unable to sell the D-2 Technology patent out from under Outland
6 USA, he still can irreparably injure Outland Canada by so narrowing the scope of the patent
7 through the patent prosecution process that he simply can design around any D-2 Technology
8 patent ultimately issued to Mr. Klassen and assigned to Outland USA. A preliminary injunction
9 should be entered to prevent such narrowing – and possible elimination – of patent rights. See
10 Compact Van Equipment Co., Inc. v. Leggett & Platt, Inc., 566 F.2d 952, 955 (5th Cir. 1978)
11 (affirming injunction against inventor prosecuting narrow patent claims which could preclude
12 former employer's patent on broader claims).

13 Even if Mr. Klassen does not narrow the patent so as to be able to design around it, there
14 are a number of errors he could make in the patent prosecution process which could compromise
15 Outland USA's patent rights. He may make inaccurate representations, fail to respond properly
16 to the patent office, or fail to properly address the prior art. Any of these errors could
17 substantially diminish the value of the patent issued.

18 If not enjoined, Mr. Klassen may eliminate Outland USA's patent rights de jure by
19 selling them to a third party. If he is unable to do so, he may eliminate Outland USA's patent
20 rights de facto by narrowing the scope of the patent to the point where he may design around the
21 patent.* Either possibility would irreparably injure Outland Canada by denying it the D-2
22 Technology patent rights.

23 **D. The Balance of Hardships Tips In Favor Of Outland Canada**

24 At a minimum, Outland Canada meets the alternative standard for a preliminary
25 injunction – “that serious questions are raised and the balance of hardships tips sharply in its
favor.” Citizens Alliance, 908 F. Supp. at 829. A serious question is “one as to which the

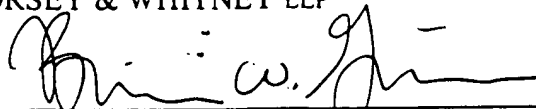
1 moving party has a 'fair chance of success on the merits'." Sierra On-Line, Inc. v. Phoenix
2 Software, Inc., 739 F.2d 1415, 1421 (9th Cir. 1984) (citation omitted). Outland Canada can show
3 at least a "fair" chance of success. Moreover, the harm to Outland Canada (total loss of its patent
4 rights, regardless of who prevails in this lawsuit) far outweighs any potential harm to Mr.
5 Klassen (a delay of a few months before he is permitted to sell the patent, assuming he prevails
6 in this lawsuit; and no harm if Outland Canada prevails). Additionally, as a major stockholder in
7 Outland Canada, Mr. Klassen will even *benefit* from Outland Canada's use of the D-2
8 Technology patent.

9 **IV. CONCLUSION**

10 Outland Canada's business is based on the patentable technologies embodied in the
11 CVR™ Technology and the D-2 Technology. To prevent the irreparable harm that will result if
12 Mr. Klassen is permitted to sell or license the D-2 Technology, or to continue prosecuting his D-
13 2 patent application, the Court now should grant Outland Canada's motion for a protective order
14 and preclude Mr. Klassen, or anyone acting in concert with him or on his behalf, from doing
15 either.

16 DATED this 2nd day of May 2002.

17 DORSEY & WHITNEY LLP

18 

19 By: Randall R. Steichen, WSBA No. 20286
20 Brian W. Grimm, WSBA No. 29619

21 Attorneys for Defendants Outland
22 Technologies, Inc., Terry Knight, Ken Bell,
23 and Garry Mihaichuk
24
25

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been
furnished by hand delivery to:

Douglas R. Shepherd
Joe Abbott
Shepherd And Abbott
222 Grand Avenue, Suite B
Bellingham, WA 98225

this 2nd day of May, 2002.



Leslie D. Teves

MAY - 2 2002

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OUTLAND TECHNOLOGIES (USA), Inc., a)
Washington corporation; OUTLAND)
DESIGN TECHNOLOGIES, INC., a)
Washington corporation; UNICK)
INVESTMENTS, LLC, a Washington limited)
liability company; TERRY MARTIN, as)
director of Outland Technologies (USA), Inc.,)
JAMES IRELAND, as a director of Outland)
Technologies (USA) Inc., CRAIG FORHAN,)
as a director of Outland Technologies (USA),)
Inc.; STEVE FRYER, as a director of Outland)
Technologies (USA), Inc.; and JAMES)
KLASSEN, as a director of Outland)
Technologies (USA), Inc.,)

Plaintiffs,

vs.

OUTLAND TECHNOLOGIES, INC., an)
Alberta, Canada corporation; TERRY)
KNIGHT; KEN BELL; and GARRY)
MIHAICHUK,)

Defendants.

NO. CV02-0229Z

**DECLARATION OF KEN BELL IN
SUPPORT OF DEFENDANTS' MOTION
FOR PRELIMINARY INJUNCTION**

RECEIVED
JUL 19 2002
OFFICE OF PETITIONS

I, KEN BELL, declare:

1. I am more than eighteen years of age, have personal knowledge of the matters set forth herein, and am competent to testify thereto.

DECLARATION OF KEN BELL IN SUPPORT OF DEFENDANTS
MOTION FOR PRELIMINARY INJUNCTION - 1
NO. CV02-0229Z

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1 2. I am the Vice President of Corporate Development of Outland Technologies, Inc.,
2 ("Outland Canada"). I joined the company in April 2000.

3 3. Upon information and belief, before I became involved with Outland Canada James
4 Klassen, an inventor, and his cousin, Terry Martin, had created several interrelated companies.
5 First, they formed T&J Enterprises. Second, they created Outland Design Technologies, Inc.
6 ("Outland Design"). Outland Design was majority owned by T&J Enterprises. Klassen, a
7 Canadian citizen, obtained a visa to work in the United States through Outland Design. Third,
8 they created Outland Hydraulics, Inc., later renamed Outland Technologies (USA), Inc.
9 ("Outland USA").

10 4. Outland USA was created to commercialize "the CvR™ Technology" and other
11 technologies invented by Klassen. The CvR™ Technology is a rotary positive displacement
12 device and related technology for use with hydraulic and other technologies. The CvR™
13 Technology has potential application as a rotary positive displacement engine and is potentially
14 capable of being used with different types of fluids as an engine or a positive displacement
15 pump.

16 5. To commercialize the CvR™ Technology and other technologies invented by
17 Klassen, funding was necessary. Upon information and belief, Klassen and Martin's funding
18 efforts resulted in Outland Design signing a letter agreement dated February 26, 1997 (the
19 "EcoTech Agreement") with a group of Canadian individuals organized as EcoTech Canada Ltd.
20 ("EcoTech"). The EcoTech Agreement established Outland Hydraulics, Inc (later renamed
21 "Outland USA"). The EcoTech Agreement provided that EcoTech would form a new Alberta
22 holding company (the "Canadian Holding Company") to purchase 50% of the shares of Outland
23 USA for US \$300,000. The remaining 50% of the shares in Outland USA were given to Outland
24 Design, in return for its contribution of existing and future technology.

25 6. From the beginning, Outland USA was run by Martin as president and chief executive
officer. Martin was also the chairman of the board of directors for Outland USA. Upon

1 information and belief, Klassen continued to be paid as an employee/inventor of Outland Design
2 because he was a Canadian citizen and it was feared by Martin that a change in his employment
3 status would negatively impact his U.S. work visa.

4 7. Outland Canada was subsequently formed to market and license the Outland USA
5 technology. Outland Canada received a worldwide license from Outland USA to commercialize
6 the CvR™ Technology. Outland Canada was and is located in Alberta, Canada and was
7 originally owned by the same shareholders, with the same ratios, as Outland USA.

8 8. Initially, Brian Webb was the president of Outland Canada. Webb was also the
9 chairman of the board of directors for Outland Canada. On April 20, 2000, Webb resigned as
10 president and was appointed chief operating officer. At that time, Martin was appointed
11 president and chief executive officer of Outland Canada. He became chairman of the board of
12 directors of Outland Canada. He was also president and chief executive officer of Outland USA.

13 9. To fund the development efforts of Outland USA, Martin and Klassen brought in a
14 new Canadian management team (the "Canadian Management") to Outland Canada, who began
15 raising money through contacts with Canadian investors. (Initially, I joined Outland Canada
16 management, with Terry Knight and Garry Mihaichuk arriving later.) With the Canadian
17 Management, new directors replaced the previous Canadian directors and the ownership ratio of
18 Outland Canada stock changed (with the issuance of additional stock).

19 10. The Canadian Management recognized and relied upon the substantial value in the
20 inventions and technology owned or to be owned by Outland USA and Klassen's unique role as a
21 substantial beneficial stockholder and employee/inventor for Outland USA.

22 11. As it was anticipated that at some point in the future Outland Canada would go
23 public, it was decided that it was in the best interests of Outland Canada for Outland Canada to
24 own Outland USA. As such, Outland USA was purchased by Outland Canada, and in effect
25 provided funds of approximately \$5 million (US) to the founding shareholders (\$2.5 million to

1 Outland Design and \$2.5 million to the Canadian Holding Company). Martin remained the
2 chairman of the board of directors for both companies.

3 12. From April, 2000 through May, 2001, the Canadian Management raised more than
4 \$15 million (CAN) for Outland Canada. These funds were deposited with Outland Canada and
5 then distributed directly to Outland USA by Outland Canada on an as-needed basis, with the
6 need determined by Martin and Klassen, and their Outland USA management. Klassen
7 continued to be the driving inventive and technical force behind Outland USA.

8 13. Klassen invented (a) improvements to the CvR™ Technology; and (b) a related
9 hydraulic technology called the "D-2 Technology." In approximately the fall of 2000, I was told
10 about the D-2 Technology.

11 14. Martin created an organization chart for Outland USA that showed that both he and
12 Klassen were Outland USA employees. A true and correct copy, to the best of my knowledge, of
13 this organization chart is attached as Exhibit A.

14 15. Klassen's full-time work for Outland USA consisted of the development of the CvR™
15 Technology and improvements to it, as well as new developments in hydraulic technology
16 generally, such as the D-2 Technology. He was assisted in his work by Outland USA
17 employees. His desk, computer, telephone, computer aided design systems and milling
18 machines, and supplies were all those of Outland USA. His compensation was generated
19 through Outland USA, which was a deposit of sufficient funds to Outland Design by Outland
20 USA to cover his paycheck. Klassen worked at the direction of Outland USA management.

21 16. When the D-2 Technology was disclosed by Martin in late 2000, he denied (a) that
22 the D-2 Technology was owned by Outland USA; and (b) that the D-2 Technology was related to
23 or competitive with the CvR™ Technology.

24 17. We (the Canadian Management) were concerned about Martin's conflicts of interest,
25 non-disclosure in the offering memoranda of Outland Canada, and Outland USA's ownership of
the D-2 Technology. On November 22, 2000, Martin assured me that, regarding the D-2

1 Technology, nothing would be done to harm existing shareholders. And, on December 22, 2000,
2 Martin indicated to me that the D-2 Technology would be the property of Outland USA.

3 18. Based on my conversations with Klassen, I've concluded that the D-2 Technology is
4 hydraulic technology and is competitive with the CvR™ Technology. A report ordered by
5 Martin reached this same conclusion.

6 19. On January 24, 2001, Martin represented to the directors of Outland Canada at a
7 directors meeting that the board needed to form a new agreement with him to acquire all present
8 and future inventions created by Klassen.

9 20. Martin convinced the board of directors of Outland Canada to agree to employment
10 contracts between Outland USA and himself, Klassen and Craig Forhan. Partial consideration
11 for the substantial compensation agreed to was that Outland Design would be sold to Outland
12 USA. We believed, through the actions and misrepresentations of Martin and Klassen, that only
13 through the acquisition of Outland Design could Outland USA own the D-2 Technology.

14 21. In April 2001, an employment agreement was executed with Klassen. It had an
15 effective date in February 2001. In this manner, Outland Canada would acquire all of the rights
16 to the D-2 Technology either from Outland Design or from Klassen individually.

17 22. Martin signed the employment agreement between Outland USA and Klassen on
18 behalf of Outland USA. He did not tell us that he and Klassen added a rider to the employment
19 agreement that allowed Klassen to retain any rights Klassen had in the D-2 Technology. The
20 rider states that Klassen's transfer of the D-2 Technology was not part of the employment
21 agreement. However, this rider was never signed by the company.

22 23. In late 2001, Martin tried to sell the D-2 Technology (which was already owned by
23 Outland USA) to Outland USA for approximately \$1.7 million (US). Martin told us that
24 Klassen did not work for Outland USA (and claimed that Klassen was an employee/inventor for
25 Outland Design); he demanded that Outland Canada pay him and Klassen, or Outland Design,
additional money for the D-2 Technology or they would leave and take the D-2 Technology with

1 them. Specifically, at a September 2001 board meeting, Martin stated that Klassen would sell to
2 a third party if Outland Canada did not purchase the D-2 Technology. A true and correct copy,
3 upon information and belief, of Martin's outline for this statement is attached as Exhibit B.

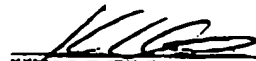
4 24. To date, Martin and Klassen have not transferred or sold Outland Design to Outland
5 USA.

6 25. For reasons related generally to Martin's management of Outland USA, Martin was
7 terminated as an employee of Outland USA and Klassen subsequently resigned. Martin was also
8 replaced in his various capacities as officer and director of Outland Canada and Outland USA. It
9 is believed that he and Klassen remain substantial beneficial stockholders of Outland Canada by
10 virtue of their continued ownership of the majority of the outstanding stock of Outland Design
11 (as Outland Design continues to be a major shareholder of Outland Canada).

12 26. On February 7, 2002, Outland Canada caused to be filed on behalf of Outland USA a
13 non-provisional patent application for the D-2 Technology (the "D-2 Patent Application") with
14 the U.S. Patent and Trademark Office. Prior to filing the D-2 Patent Application, the
15 management of Outland USA requested that Klassen execute an assignment of the D-2
16 Technology confirming ownership of the D-2 Technology in Outland USA. Klassen, through his
17 counsel, failed and refused to sign the assignment, and counsel for Klassen further advised
18 Outland USA management that Klassen had filed his own non-provisional patent application for
19 the D-2 Technology.

20 I declare under penalty of perjury of the laws of the State of Washington and of the
21 United States that the foregoing is true and correct to the best of my knowledge and belief.

22 Signed at CALGARY, ALTA this 20 day of May, 2002.

23
24 
25 KEN BELL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been
furnished by hand delivery to:

Douglas R. Shepherd
James Abbott
Shepherd And Abbott
222 Grand Avenue, Suite B
Bellingham, WA 98225

this 2nd day of May, 2002.



Leslie D. Teves

EXHIBIT A

interoffice memo

Date: 8/16/2000

To: James Klassen, Craig Forhan, Edward Hubbard, ~~Teresa Vietz~~, Heather
Lowe, Don Weiland

From: Terry Martin

RE: Corporate Structure

First I would like to thank each of you as individuals for your input during Outland Technologies' strategy session. As agreed I'm sending the Corporate Structure as we discussed. Attached are the goals for each team for the month of August.

Please feel free to contact me with a questions or concerns.

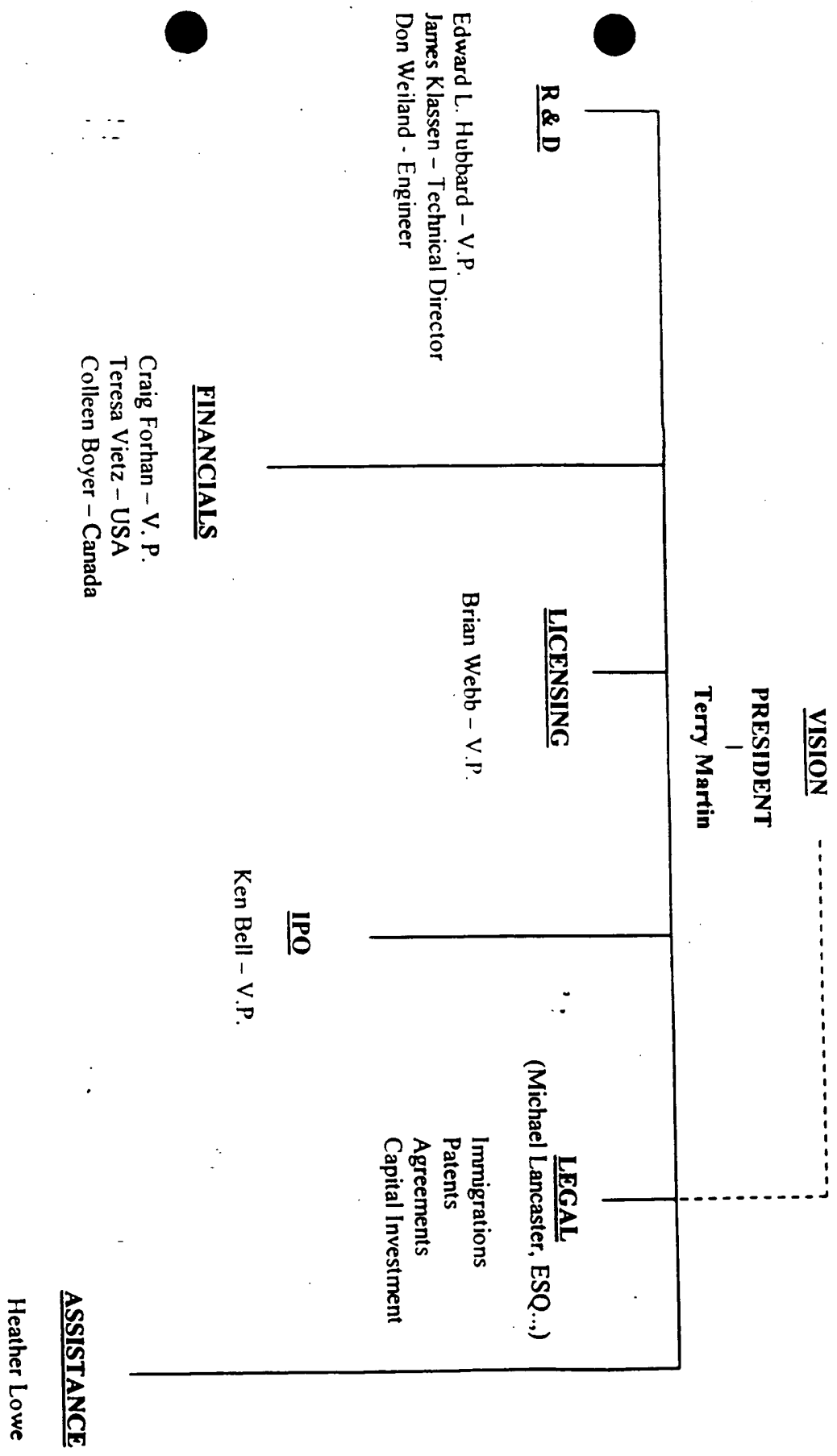
Also, please review the last job description you wrote and send me a copy.

8/16/2000

Confidential

**CORPORATE STRUCTURE
AS OF AUGUST 2000**

OUTLAND TECHNOLOGIES, INC. & OUTLAND TECHNOLOGIES (USA), INC.



R & D: **Re: 8/10/00** R & D will include identifying the location, equipment and tooling for the new facility. A complete assessment which includes timing, human resources, relocating, taxes, lease option vs. purchase, and employee's with positions defined. Each area should be a milestone in completing this task.

During this time, Weatherford issues must be dealt with in a positive manner. Communication and timing is the issue. I would like to see key dates identified in the development of the axial flow and compressor.

i.e.: September 14, 2000 – Axial Flow Acrylic Models
 October 31, 2000 – Compressor Models
 November 30, 2000 – Bronze Axial Flow

In each date list the issues Outland Technologies, Inc. will need to deal with, along with a resolution to the issue.

Financials: **Re: 8/10/00** Will include both Canada and USA facilities. August 31, 2000 is year end for Canada, which will include USA financials as of May 10, 2000 forward. Complete a plan of action, listing dates of completion on how Outland Technologies, Inc. is going to accomplish these short-term goals.

Year-end in both companies needs to be adjusted to assist with the I. P.O. All communication within the Corporation will be in memo form to keep track for accountability.

The second goal is to review all books from August 1998 to present in both Canada and USA. The team will go back through all months – pre first offering memorandum with Canaccord Capital.

The third goal is in the area of budgets. All areas within the corporate structure from January 1, 2001, to December 31, 2001 needs to be completed.

The fourth goal is to complete a 5-year forecast in Outland Technologies for the I. P. O.

Licensing: **Re: 8/10/00** Licensing will identify all contacts to date and the condition of each contact. A 3-ring binder with all correspondence including verbal communication with dates and time should be completed for each contact.

Licensing needs to layout a plan of action with criteria to assist in identifying industries and products. Industries identified along with the criteria will establish if Outland Technologies should go forward. The criteria will include complete knowledge of each individual an Corporation Outland Technologies makes contact with. A complete history including Directors, Officers, etc. will be completed.

Licensing will also research off shore public trading countries. Establish the upside and downside to each given market.

I. P. O. Re: 8/10/00

The I. P. O. is a crucial area with regard to the future of Outland Technologies. As Outland Technologies looks at the I. P. O. all i's must be dotted with all t's crossed. Outland Technologies must be aware of the advantages and disadvantages which would include: Listing requirements, do we meet them, if so, how. Regulations to securities, pricing and timing, identifying our dealer, along with many other concerns. To help Outland Technologies make a sound decision list all considerations along with the consequences.

While listing all considerations, identify key positions within the organization and criteria within each position. Identify how Outland Technologies will locate these individuals.

As with all areas, milestones must be identified and how Outland Technologies is going to achieve them.

Legal Re: 8/10/00

Legal review will structure a goal orientated review systems. The review will identify the patents and current status. A proposed time-line will be completed identifying the milestones to Outland Technologies patent structure. A review by R & D will be essential in identifying future milestones and structure as Outland Technologies continues to apply for CIP's.

Immigration is becoming more important to Outland Technologies. Human resources will identify a checklist, which Outland Technologies can follow as this area expands.

As Outland Technologies prepares for future capital, all offerings will be reviewed by a set standard, which will be identified for all teams to use. In preparing for the I. P. O. all documents will be reviewed. All documents will be backed up with other documents to file.

All license/development agreements will be reviewed in the final stages of this office. Criteria will be set up with a checklist so Outland Technologies covers all areas within each agreement, prior to review.

Assistance: Re: 8/10/00

This area will identify itself as Outland Technologies steps forward. The assistant will be our first line contact and will assist in any area requested.

The way the assistant is perceived will affect Outland Technologies. We must be business like, along with being able to make the contact comfortable with the available knowledge.

EXHIBIT B

OUTLINE

1. Issues created - D2

- (a) Brian Webb
- (b) Ken Bell
- (c) 718844

2. The issue must be resolved

- (a) James Klassen owns D2, not ODTI
- (b) If you assume ODTI owned D2, then the best case scenario is:
 - (i) Hydraulic applications in D2 - only; and
 - (ii) Right of first refusal for all other applications

Hydraulic operations are those operated by the force and movement of a liquid under pressure. The hydraulic application contemplated at the time the 1997 letter agreement was signed was pumping applications. The transfer of hydraulic fluids.

The other non-hydraulic applications which are available include:

- 1. Use of expansion pressure from natural gas for pressure turbine;
- 2. Steam pressure;
- 3. Thermal pressure;
- 4. Hydro pressure;
- 5. Wind/air turbines;
- 6. Solar;
- 7. Combined cycle gas turbines;

License Agreements are negotiated based on specific applications, in specific industries and in specific territories. The company is in a unique position to acquire all applications, for all industries and all territories throughout the world.

How much do you think that's really worth?

- 3. If the board does not approve a specific offer - the first right of refusal, as a remote potential contingent claim, will be triggered by a third party offer.
- 4. James has made it clear that if the Board does not make a reasonable offer to acquire the D2 Technology, he will solicit a third party offer to trigger any potential first right of refusal. The company will have a period of ten (10) days to fund a cash offer matching the third party offer or the right of refusal, if any, will expire.

5. The company will then be placed in the position of losing the new technology and making a claim against it's key inventor for D2 Hydraulic applications based on an interpretation of a Letter Agreement from 1997 which:
- (a) Contains no reference to the D2 technology in the agreement nor in the Schedule of Intellectual Property attached to the agreement;
 - (b) No claim has been made for the D2 technology for over four (4) years. [February 26, 1997].
 - (c) In fact, no claim was made even after the issue was again presented on January 24, 2001 at the joint Board Meeting. The Board requested that it be investigated by a disinterested board member and it was. No action was taken.
 - (d) No action has ever been taken by anyone asserting any rights to D2.
6. Negative action by the company will have a negative impact.



MAY - 2 2002



THE HONORABLE THOMAS S. ZILLY
BY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OUTLAND TECHNOLOGIES (USA), Inc., a)
Washington corporation; OUTLAND)
DESIGN TECHNOLOGIES, INC., a)
Washington corporation; UNICK)
INVESTMENTS, LLC, a Washington limited)
liability company; TERRY MARTIN, as)
director of Outland Technologies (USA), Inc.,)
JAMES IRELAND, as a director of Outland)
Technologies (USA) Inc., CRAIG FORHAN,)
as a director of Outland Technologies (USA),)
Inc.; STEVE FRYER, as a director of Outland)
Technologies (USA), Inc.; and JAMES)
KLASSEN, as a director of Outland)
Technologies (USA), Inc.,)

Plaintiffs,

vs.

OUTLAND TECHNOLOGIES, INC., an)
Alberta Canada corporation; TERRY)
KNIGHT; KEN BELL; and GARRY)
MIHAICHUK,)

Defendants.

NO. CV02-0229Z

**DECLARATION OF MICHAEL HUGHES
IN SUPPORT OF DEFENDANTS'
MOTION FOR PRELIMINARY
INJUNCTION**

RECEIVED

JUL 19 2002

OFFICE OF PETITIONS

I, MICHAEL HUGHES, declare:

1. I am more than eighteen years of age, have personal knowledge of the matters set forth herein, and am competent to testify thereto.

DECLARATION OF MICHAEL HUGHES IN SUPPORT OF
DEFENDANTS' MOTION FOR PRELIMINARY INJUNCTION - 1

NO. CV02-0229Z

DORSEY & WHITNEY LLP
U.S. BANK BUILDING CENTER
1420 FIFTH AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101
PHONE: (206) 903-8800
FAX: (206) 903-8820

1 2. I have been licensed to practice law in the State of Washington since 1999. I have
2 been licensed before the United States Patent and Trademark Office since 1996.

3 3. I have prepared and filed patent applications for Outland Technologies (USA), Inc.
4 ("Outland USA") since 1999, first in my capacity as an associate for the law firm of Hughes &
5 Schacht P.S. (mid-1999 to April 2, 2001) and from thereafter to the present as in-house patent
6 counsel. From the middle of 1999 to the end of 2000, I made several visits to Outland USA.
7 During these visits, I met James Klassen.

8 4. On or about August of 2000, I attended an Outland USA meeting in Lynden, WA.
9 Terry Martin, James Klassen, Ed Hubbard and myself were in attendance in this meeting. One
10 of the topics of this meeting was a new hydraulic technology, a rotary motion and positive
11 displacement device that James Klassen had invented that was referred to as the "D-2
12 Technology." The D-2 Technology was based on two-dimensional surfaces (as opposed to
13 three-dimensional surfaces of the other Outland USA hydraulic technology known as the
14 "CvR™ Technology.")

15 5. Terry Martin, the CEO of Outland USA stated that the D-2 Technology was the
16 property of James Klassen. I recited to the participants in the meeting the general law regarding
17 the duty to assign technology to an employer if the employee was paid to invent and if the
18 invention was done in the scope of employment. Terry Martin responded to me by saying that I
19 did not need to worry about that issue and indicated that eventually all of the technology would
20 end up in the same place.

21 6. I informed all the participants of the meeting that I would have to check to make sure
22 the CvR™ Technology was not relevant prior art to the D-2 Technology in order to assist in
23 protecting it. When I left the meeting, I took some printed out schematics of the D-2 Technology
24 to my office in Bellingham, Washington, and compared the D-2 Technology to U.S. Patent No.
25 5,755,196 (the CvR™ Technology) patent and the cited prior art. I also conducted a search on
the D-2 Technology by employing a search associate, Vance Israel of Accusearch.

1 7. On February 8, 2001, I filed a provisional patent for D-2 Technology.

2 8. In March 2001, Outland USA relocated to Irvine, CA. On April 2, 2001, I became an
3 employee of Outland USA and moved to Irvine, California.

4 9. Between April 2, 2001 until November 22, 2001 (my initial employment period), I
5 drafted several patent applications related to the CvR™ Technology. The patent applications
6 included domestic and Patent Cooperation Treaty (PCT) applications that were filed in the name
7 of Outland USA. The only patent application I ever filed with James Klassen as the inventor that
8 was not to be assigned to Outland USA was the D-2 Technology provisional patent application.

9 10. During my initial employment period I worked with James Klassen daily at the
10 Outland USA offices, where such work included developing manuals showing the methods of
11 making the CvR™ Technology rotors for the benefit of our licensees, documenting the
12 conception of new ideas, brainstorming cause and effect relationships of CvR™ Technology
13 design parameters, development of the various critical and non-critical surface geometries. In
14 September of 2001, James Klassen and I presented a three week course about the CvR™
15 Technology to licensees of the CvR™ Technology.

16 I declare under penalty of perjury of the laws of the State of Washington and of the
17 United States that the foregoing is true and correct to the best of my knowledge and belief.

18 Signed at Calgary, Alberta this 7 day of May, 2002.

19
20 
21 MICHAEL HUGHES

22
23
24
25
DECLARATION OF MICHAEL HUGHES IN SUPPORT OF
DEFENDANTS' MOTION FOR PRELIMINARY INJUNCTION - 3

NO. CV02-0229Z

DORSEY & WHITNEY LLP
U.S. BANK BUILDING CENTER
1400 FIFTH AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101
(PHONE: (206) 903-8800
FAX: (206) 903-8820

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been
furnished by hand delivery to:

Douglas R. Shepherd
James Abbott
Shepherd And Abbott
222 Grand Avenue, Suite B
Bellingham, WA 98225

this 2nd day of May, 2002.



Leslie D. Teves

★

MAY - 2 2002

★

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OUTLAND TECHNOLOGIES (USA), Inc., a)
Washington corporation; OUTLAND)
DESIGN TECHNOLOGIES, INC., a)
Washington corporation; UNICK)
INVESTMENTS, LLC, a Washington limited)
liability company; TERRY MARTIN, as)
director of Outland Technologies (USA), Inc.,)
JAMES IRELAND, as a director of Outland)
Technologies (USA) Inc., CRAIG FORHAN,)
as a director of Outland Technologies (USA),)
Inc.; STEVE FRYER, as a director of Outland)
Technologies (USA), Inc.; and JAMES)
KLASSEN, as a director of Outland)
Technologies (USA), Inc.,)

Plaintiffs,

vs.

OUTLAND TECHNOLOGIES, INC., an)
Alberta Canada corporation; TERRY)
KNIGHT; KEN BELL; and GARRY)
MIHAICHUK,)

Defendants.

NO. CV02-0229Z

[Defendants' Proposed]

**ORDER GRANTING DEFENDANTS'
MOTION FOR PRELIMINARY
INJUNCTION**

This matter is before the Court on Defendants' Motion for Preliminary Injunction. The Court having considered the moving and opposition papers, the arguments of counsel, and all

[Defendants' Proposed] ORDER GRANTING DEFENDANTS'
MOTION FOR PRELIMINARY INJUNCTION - 1

NO. CV02-0229Z

DORSEY & WHITNEY LLP
U.S. BANK BUILDING CENTER
1420 FIFTH AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101
PHONE: (206) 903-8800
FAX: (206) 903-8820

1 other matters presented to the Court, and having found that Defendants are likely to succeed on
2 the merits and may suffer irreparable harm if the injunction is not entered, Defendants' Motion is
3 GRANTED.

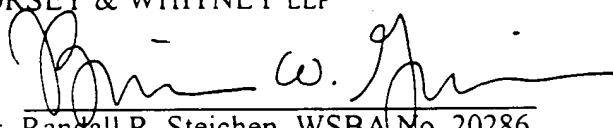
4 Plaintiff James Klassen, and anyone acting in concert with him or on his behalf, are
5 hereby enjoined from selling or licensing the D-2 Technology or taking any action with respect
6 to Mr. Klassen's pending patent application for the D-2 Technology.

7
8 DATED this ____ day of May 2002.

9
10
11 THE HONORABLE THOMAS S. ZILLY
12 UNITED STATES DISTRICT JUDGE

13 Presented by:

14 DORSEY & WHITNEY LLP

15 
16 By: Randall R. Steichen, WSBA No. 20286
Brian W. Grimm, WSBA No. 29619

17 Attorneys for Defendants Outland
18 Technologies, Inc., Terry Knight, Ken Bell,
19 and Garry Mihaichuk
20
21
22
23
24
25

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been
furnished by hand delivery to:

Douglas R. Shepherd
Joe Abbott
Shepherd And Abbott
222 Grand Avenue, Suite B
Bellingham, WA 98225

this 2nd day of May, 2002.



Leslie D. Teves



**NW LEGAL
SUPPORT**

526 Yale Ave., Suite A
Seattle, WA 98109
Phone: (206) 223-9426
Fax: (206) 223-9475
www.nwlegal.com

Office Use Only

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Firm Name: DORSEY & WHITNEY LLP

ME

Requestor: L. Teves 42

Client Matter # 460159-2

Cause # CV02-0229Z

Case Name
Outland Technologies, Inc.

Date: 5/2/02

Documents

Motion for Preliminary Injunction; Proposed Order; Declaration of Michael Hughes; Declaration of Ken Bell

Delivery Instructions:

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Shepherd and Abbott
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Bellingham, WA 98225

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Requestor: L. Teves 42

Cause # CV02-0229Z

Client Matter # 460159-2

Case Name
Outland Technologies, Inc.

Date: 5/2/02

Documents

Motion for Preliminary Injunction; Proposed Order; Declaration of Michael Hughes; Declaration of Ken Bell

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Joe Abbott
Shepherd and Abbott
222 Grand Ave., Suite B
Bellingham, WA 98225

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MAY 02 2002

SHEPHERD AND ABBOTT

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Deadline: 05/02/02

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MAY 02 2002

SHEPHERD AND ABBOTT

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OUTLAND TECHNOLOGIES (USA), Inc., a)
Washington corporation; OUTLAND)
DESIGN TECHNOLOGIES, INC., a)
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INVESTMENTS, LLC, a Washington limited)
liability company; TERRY MARTIN, as)
director of Outland Technologies (USA), Inc.,)
JAMES IRELAND, as a director of Outland)
Technologies (USA) Inc., CRAIG FORHAN,)
as a director of Outland Technologies (USA),)
Inc.; STEVE FRYER, as a director of Outland)
Technologies (USA), Inc.; and JAMES)
KLASSEN, as a director of Outland)
Technologies (USA), Inc.,)

Plaintiffs,

vs.

OUTLAND TECHNOLOGIES, INC., an)
Alberta Canada corporation; TERRY)
KNIGHT; KEN BELL; and GARRY)
MIHAICHUK,)

Defendants.

NO. CV02-0229Z

**DECLARATION OF MICHAEL HUGHES
IN SUPPORT OF DEFENDANTS'
MOTION FOR PRELIMINARY
INJUNCTION**

I, MICHAEL HUGHES, declare:

1. I am more than eighteen years of age, have personal knowledge of the matters set forth herein, and am competent to testify thereto.

DECLARATION OF MICHAEL HUGHES IN SUPPORT OF
DEFENDANTS' MOTION FOR PRELIMINARY INJUNCTION - 1

NO. CV02-0229Z

DORSEY & WHITNEY LLP
U.S. BANK BUILDING CENTER
1420 FIFTH AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101
PHONE: (206) 903-8800
FAX: (206) 903-8820

RECEIVED
MAY 02 2002
SHEPHERD AND ABBOTT

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OUTLAND TECHNOLOGIES (USA), Inc., a)
Washington corporation; OUTLAND)
DESIGN TECHNOLOGIES, INC., a)
Washington corporation; UNICK)
INVESTMENTS, LLC, a Washington limited)
liability company; TERRY MARTIN, as)
director of Outland Technologies (USA), Inc.,)
JAMES IRELAND, as a director of Outland)
Technologies (USA) Inc., CRAIG FORHAN,)
as a director of Outland Technologies (USA),)
Inc.; STEVE FRYER, as a director of Outland)
Technologies (USA), Inc.; and JAMES)
KLASSEN, as a director of Outland)
Technologies (USA), Inc.,)

Plaintiffs,

vs.

OUTLAND TECHNOLOGIES, INC., an)
Alberta, Canada corporation; TERRY)
KNIGHT; KEN BELL; and GARRY)
MIHAICHUK,)

Defendants.

NO. CV02-0229Z

**DECLARATION OF KEN BELL IN
SUPPORT OF DEFENDANTS' MOTION
FOR PRELIMINARY INJUNCTION**

I, KEN BELL, declare:

1. I am more than eighteen years of age, have personal knowledge of the matters set forth herein, and am competent to testify thereto.

DECLARATION OF KEN BELL IN SUPPORT OF DEFENDANTS
MOTION FOR PRELIMINARY INJUNCTION - 1
NO. CV02-0229Z

DORSEY & WHITNEY LLP
U.S. BANK BUILDING CENTER
1420 FIFTH AVENUE, SUITE 3400
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THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OUTLAND TECHNOLOGIES (USA), Inc., a)
Washington corporation; OUTLAND)
DESIGN TECHNOLOGIES, INC., a)
Washington corporation; UNICK)
INVESTMENTS, LLC, a Washington limited)
liability company; TERRY MARTIN, as)
director of Outland Technologies (USA), Inc.,)
JAMES IRELAND, as a director of Outland)
Technologies (USA) Inc., CRAIG FORHAN,)
as a director of Outland Technologies (USA),)
Inc.; STEVE FRYER, as a director of Outland)
Technologies (USA), Inc.; and JAMES)
KLASSEN, as a director of Outland)
Technologies (USA), Inc.,)

Plaintiffs,

vs.

OUTLAND TECHNOLOGIES, INC., an)
Alberta Canada corporation; TERRY)
KNIGHT; KEN BELL; and GARRY)
MIHAICHUK,)

Defendants.

NO. CV02-0229Z

[Defendants' Proposed]

**ORDER GRANTING DEFENDANTS'
MOTION FOR PRELIMINARY
INJUNCTION**

This matter is before the Court on Defendants' Motion for Preliminary Injunction. The Court having considered the moving and opposition papers, the arguments of counsel, and all

[Defendants' Proposed] ORDER GRANTING DEFENDANTS'
MOTION FOR PRELIMINARY INJUNCTION - 1

NO. CV02-0229Z

DORSEY & WHITNEY LLP
U.S. BANK BUILDING CENTER
1420 FIFTH AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101
PHONE: (206) 903-8800
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THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OUTLAND TECHNOLOGIES (USA), Inc., a)
Washington corporation; OUTLAND)
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INVESTMENTS, LLC, a Washington limited)
liability company; TERRY MARTIN, as)
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as a director of Outland Technologies (USA),)
Inc.; STEVE FRYER, as a director of Outland)
Technologies (USA), Inc.; and JAMES)
KLASSEN, as a director of Outland)
Technologies (USA), Inc.,)

Plaintiffs,

vs.

OUTLAND TECHNOLOGIES, INC., an)
Alberta Canada corporation; TERRY)
KNIGHT; KEN BELL; and GARRY)
MIHAICHUK,)

Defendants.

NO. CV02-0229Z

**DEFENDANTS' MOTION FOR
PRELIMINARY INJUNCTION**

NOTE ON MOTION CALENDAR:
MAY 17, 2002

ORAL ARGUMENT REQUESTED



526 Yale Ave., Suite A
Seattle, WA 98109
Phone: (206) 223-9426
Fax: (206) 223-9475
www.nwlegal.com

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Trans. No.

Firm Name: DORSEY & WHITNEY LLP

Requestor: L. Teves 42

Client Matter # 460159-2

Cause # CV02-0229Z

Case Name
Outland Technologies, Inc.

Date: 5/2/02

Documents
Motion for Preliminary Injunction; Proposed Order; Declaration of Michael Hughes; Declaration of Ken Bell

Delivery Instructions:

☐ Deliver To ☐ Pickup From ☒ Copy Receive ☐ Obtain Signature ☐ Round Trip ☐ Return Original

Douglas R. Shepherd
Joe Abbott
Shepherd and Abbott
222 Grand Ave. Suite B
Bellingham, WA 98225

COPY

Special Instructions:

Deadline: 05/02/02

Filing Instructions:

☐ Serve 1st ☐ File 1st ☒ Judge's Copy
County: ☐ Superior ☐ Bankruptcy ☒ Federal ☐ District ☐ Appeals ☐ Auditor

Process Service:

☐ Serve ☐ Post ☐ Marital Community ☐ Affidavit of Service Required Deadline:

THE HONORABLE THOMAS S. ZILLY

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WESTERN DISTRICT OF WASHINGTON
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MAY 17 2002
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OUTLAND TECHNOLOGIES (USA), Inc., a)
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Plaintiffs,

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OUTLAND TECHNOLOGIES, INC., an)
Alberta Canada corporation; TERRY)
KNIGHT; KEN BELL; and GARRY)
MIHAICHUK,)

Defendants.

NO. CV02-0229Z

STIPULATION AND PROPOSED
ORDER REGARDING MOTION FOR
PRELIMINARY INJUNCTION AND
MOTION FOR RELIEF FROM
DEPOSITION LIMITATIONS

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STIPULATION AND PROPOSED ORDER REGARDING MOTION
FOR PRELIMINARY INJUNCTION AND MOTION FOR RELIEF
FROM DEPOSITION LIMITATIONS - 1

NO. CV02-0229Z

ORIGINAL

DORSEY & WHITNEY LLP
U.S. BANK BUILDING CENTER
1420 FIFTH AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101
PHONE: (206) 903-8800
FAX: (206) 903-8820

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DORSEY & WHITNEY LLP
U.S. BANK BUILDING CENTER
1420 FIFTH AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101
PHONE: (206) 903-8800
FAX: (206) 903-8820

1
2 DATED this 8th day of May 2002

3 BUSH STROUT & KORNFELD

4 David Strout
5 By: David Strout, WSBA No. 9421
6 *per written authorization*
601 Union Street, #5500
7 Seattle, Washington 98101
Telephone: (206) 292-2110
8 Facsimile: (206) 292-2104

9 Attorneys for Plaintiff James Klassen

DORSEY & WHITNEY LLP

Brian W. Grimm
By: Randall R. Steichen, WSBA No. 20286
Brian W. Grimm, WSBA No. 29619

U.S. Bank Centre
1420 Fifth Avenue, Suite 3400
Seattle, Washington 98101
Telephone: (206) 903-8800
Facsimile: (206) 903-8820

Attorneys for Defendants Outland
Technologies, Inc., Terry Knight, Ken Bell,
and Garry Mihaichuk

12
13 **ORDER**

14 Based on the foregoing, it is hereby ordered that plaintiff James Klassen, and anyone
15 acting in concert with him or on his behalf, are enjoined from selling, licensing, or otherwise
16 transferring any rights to the D-2 Technology, or taking any action with respect to Mr. Klassen's
17 patent application for the D-2 Technology. This injunction shall remain in effect unless and until
18 the Court rules on Defendants' Motion For Preliminary Injunction, which along with
19 Defendants' Motion For Relief From Deposition Limitations, shall be removed from the Court's
20 calendar and may be re-noted by either defendants or Mr. Klassen at a future time.

21 DATED this 17th day of May 2002.

22 Thomas S. Zilly
23 THE HONORABLE THOMAS S. ZILLY
24 UNITED STATES DISTRICT JUDGE
25

STIPULATION AND PROPOSED ORDER REGARDING MOTION
FOR PRELIMINARY INJUNCTION AND MOTION FOR RELIEF
FROM DEPOSITION LIMITATIONS - 3

NO. CV02-0229Z

DORSEY & WHITNEY LLP
U.S. BANK BUILDING CENTER
1420 FIFTH AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101
PHONE: (206) 903-8800
FAX: (206) 903-8820

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David Strout
Bush Strout & Kornfeld
601 Union, Suite 5500
Seattle, WA 98101-2373

this 8th day of May, 2002.

Leslie D. Teves

DORSEY & WHITNEY LLP
U.S. BANK BUILDING CENTER
1420 FIFTH AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101
PHONE: (206) 903-8800
FAX: (206) 903-8820



PATENT
26537.00100

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

JAMES KLASSEN

Serial No: 10/072,095

Filed: February 8, 2002

For: ROTARY POSITIVE DISPLACEMENT
DEVICE

Art Unit: Not Assigned

Examiner: Not Assigned

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addressed to: Commissioner for Patents
Washington D.C. 20231, on

July 15, 2002

Date of Deposit

Kathy Hinckley

Name

Signature

Date

Office of Petitions

Box DAC

Commissioner for Patents

Washington, D.C. 20231

STATEMENT OF LAST KNOWN ADDRESS OF INVENTOR

In support of its "Petition to Proceed With This Application For Patent Under
37 C.F.R. 1.47(b)" submitted herewith, applicant avers that the last known
address of inventor James KLASSEN is 2253 Martin Street #420C, Irvine,
California, 92612.

RECEIVED

JUL 19 2002

Respectfully submitted, OFFICE OF PETITIONS
CROSBY, HEAFEY, ROACH & MAY

Date: July 15, 2002

By:

JoAnne S. Redmann
JoAnne S. Redmann

Registration No. 31,482

Attorney for Applicant

Crosby Heafey Roach & May
1901 Avenue of the Stars, Suite 700
Los Angeles, CA 90067
Phone: (310) 734-5277
Fax: (310) 734-5299

COPY

PATENT
26537.00100

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

JAMES KLASSEN

Serial No: 10/072,095

Filed: February 8, 2002

For: ROTARY POSITIVE DISPLACEMENT
DEVICE

Art Unit: Not Assigned

Examiner: Not Assigned

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Kathy Hinckley

Name


Signature

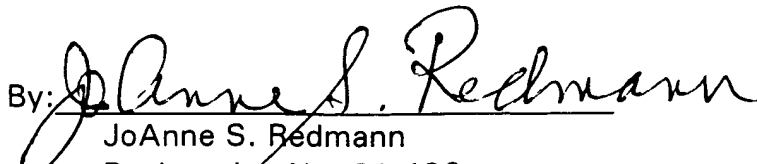
07/15/02
Date

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California, 92612.

Respectfully submitted,
CROSBY, HEAFEY, ROACH & MAY

Date: July 15, 2002

By: 
JoAnne S. Redmann
Registration No. 31,482
Attorney for Applicant

Crosby Heafey Roach & May
1901 Avenue of the Stars, Suite 700
Los Angeles, CA 90067
Phone: (310) 734-5277
Fax: (310) 734-5299

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COPY

PATENT
26537.00100

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

JAMES KLASSEN

Serial No: 10/072,095

Filed: February 8, 2002

For: ROTARY POSITIVE DISPLACEMENT
DEVICE

Art Unit: Not Assigned

Examiner: Not Assigned

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July 15, 2002

Date of Deposit

Kathy Hinckley

Name

[Signature]

Signature

Date

PETITION FOR EXTENSION OF TIME

Box MISSING PARTS

Commissioner for Patents

Washington, D.C. 20231

Dear Sir:

In accordance with 37 C.F.R. 1.136, Applicant respectfully petitions the Commissioner for a three-month extension of time extending to August 12, 2002, the period for response to the Notice to File Missing Parts of Nonprovisional Application dated March 12, 2002. Please charge the fee of \$460.00 for this extension to Deposit Account No. 50-1796, referencing docket number 26537.00100. The responsive papers are attached.

Please charge any insufficiency or credit any overpayment to Deposit Account No. 50-1796, referencing docket number 26537.00100. A copy of this petition is enclosed.

Respectfully submitted,
CROSBY, HEAFEY, ROACH & MAY

Date: July 15, 2002

By:

[Signature: JoAnne S. Redmann]

JoAnne S. Redmann

Registration No. 31,482

Attorney for Applicant

Crosby Heafey Roach & May
1901 Avenue of the Stars, Suite 700
Los Angeles, CA 90067
Phone: (310) 734-5277
Fax: (310) 734-5299

COPY

PATENT
26537.00100

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

JAMES KLASSEN

Serial No: 10/072,095

Filed: February 8, 2002

For: ROTARY POSITIVE DISPLACEMENT
DEVICE

Art Unit: Not Assigned

Examiner: Not Assigned

Office of Petitions
Box DAC
Commissioner for Patents
Washington, D.C. 20231


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July 15, 2002

Date of Deposit

Kathy Hinckley

Name


Signature

07/15/02
Date

**DECLARATION OF JOANNE S. REDMANN IN SUPPORT OF
PETITION TO PROCEED WITH THIS APPLICATION FOR PATENT
UNDER 37 C.F.R. 1.47(b)**

The undersigned is the attorney of record in the above-identified patent
application and declares as follows:

1. On behalf of the Applicant, Outland Technologies, Inc. ("Outland
USA"), on February 7, 2002, the undersigned directed a process server, NICOLAS
CARRILLO, employed by Time Machine Network, a messenger service incorporated
in the State of California, whose business address is 132 South Beaudry Avenue,
Los Angeles, California, 90012, to deliver a copy of the patent application for the
above-identified application entitled "ROTARY POSITIVE DISPLACEMENT DEVICE"
(the "D-2 Patent Application") including specification, claims and drawings, with a

Declaration/Power of Attorney form and an Assignment form for the D-2 Patent Application to the sole inventor, JAMES KLASSEN, at his last known address, 2253 Martin Street, #420C, Irvine, California, 92612, and requested that Klassen sign the two forms and return them to the process server for delivery at my office at CROSBY, HEAFEY, ROACH & MAY, 1901 Avenue of the Stars, Suite 700, Los Angeles, California 90067. (See Affidavit of Nicolas Carrillo executed on February 8, 2002, annexed hereto as Exhibit 1.)

2. Carrillo arrived at the above address at 3:49 p.m. on February 7, 2002 and met Klassen there.

3. At that time, Klassen did not sign and return the Declaration/Power of Attorney and Assignment documents to Carrillo for delivery to me. However, Klassen did tell Carrillo at 3:52 p.m. to return to his address on February 8, 2002 anytime before 4:30 p.m., and implied that he would have the signed declaration available at that time.

4. On February 8, 2002, I received a facsimile letter from Klassen's attorney, Stanley R. Jones, Esq., in which he advised that Klassen would not be signing the declaration of the inventor or the assignment for the D-2 Patent Application, and that he would not execute the confirmatory assignment for the underlying technology (the "D-2 Technology"). (See Letter of Stanley R. Jones, dated February 8, 2002, a true and accurate copy is annexed hereto as Exhibit 2 and made a part hereof by reference.)

5. Based upon Jones' letter and instruction, the process server did not return to Klassen's address on February 8, 2002.

6. The Applicant, Outland USA, is a wholly owned subsidiary of Outland Technologies, Inc. ("Outland Canada"). Earlier this year, Klassen and several others filed a lawsuit in the United States District Court for the Western District of Washington at Seattle, Case No. CV02-0229Z (the "District Court Action") against Outland Canada and its management. On April 11, 2002, in the District Court Action, Outland Canada counterclaimed against Mr. Klassen (see Exhibit B to the Petition to Proceed with This Application for Patent under 37 C.F.R. 1.47(b)). with claims against Klassen for, *inter alia*, breach of fiduciary duty, fraud, and conversion of the D-2 Technology. Outland Canada has asked the U.S. District Court to rule that the D-2 Technology is owned by Outland USA without any claim of right by Klassen. Outland USA is confident that, based on the relevant facts, the U.S. District Court will rule that the D-2 Technology is owned by Outland USA.

7. On May 2, 2002, Outland Canada filed a motion for preliminary injunction (see Exhibits C1-C3 to the Petition to Proceed with This Application for Patent under 37 C.F.R. 1.47(b)) providing a factual basis (set forth in documents and affidavits) and legal analysis for its claim that the D-2 Technology belonged to Outland USA, and requesting that Klassen be enjoined from prosecuting any patent application for the D-2 Technology and/or transferring or otherwise encumbering the D-2 Technology. The motion for preliminary injunction was based on the law

of the State of Washington, as Klassen was a resident of the State of Washington when he invented the D-2 Technology.

8. With Washington co-counsel Dorsey and Whitney, at 1420 Fifth Avenue, Suite 3400, Seattle, Washington 98101, I researched and prepared the motion and memorandum for preliminary injunction, and affidavits in support. I am familiar with Washington law on the issue of Outland USA's ownership of the D-2 Technology and I was *pro hac vice* counsel in the District Court Action at the time the motion for preliminary injunction was filed by local counsel.

9. In support of its motion for preliminary injunction, Outland Canada provided the U.S. District Court with more than sufficient facts (through affidavits and documents) to support the U.S. District Court's finding that it is likely that Outland Canada would prevail on its claim that Outland USA owns the D-2 Technology. That is, based on the facts demonstrated, it is likely that the U.S. District Court would by the weight of authority in its jurisdiction award title of the D-2 Technology to Outland USA.

10. On May 17, 2002, Klassen stipulated to a preliminary injunction order that prohibits him from proceeding with a patent application on his own behalf or

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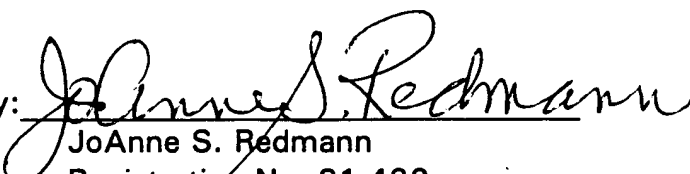
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transferring or otherwise encumbering the D-2 Technology. (See Exhibit D to the
Petition to Proceed with This Application for Patent under 37 C.F.R. 1.47(b)).

Respectfully submitted,
CROSBY, HEAFEY, ROACH & MAY

Date: July 15, 2002

By: 
JoAnne S. Redmann
Registration No. 31,482
Attorney for Applicant

Crosby Heafey Roach & May
1901 Avenue of the Stars, Suite 700
Los Angeles, CA 90067
Phone: (310) 734-5277
Fax: (310) 734-5299

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AFFIDAVIT

The undersigned, under penalty of perjury, declares that:

1. The undersigned is employed by Time Machine Network, a messenger service incorporated in the state of California, whose business address is 132 South Beaudry Avenue, Los Angeles, CA 90012.

2. On February 7, 2002 at 3:49 p.m. the undersigned arrived at the last known address of James KLASSEN, at 2253 Martin Street #420C, Irvine, California, 92612 to deliver the patent application entitled "ROTARY POSITIVE DISPLACEMENT DEVICE," including specification, claims and drawings, and a Declaration/Power of Attorney form and an Assignment form to be signed by Mr. Klassen and returned to me for delivery to JoAnne S. Redmann, Esq. at CROSBY, HEAFEY, ROACH & MAY, 1901 Avenue of the Stars, Suite 700, Los Angeles, California 90067.

3. Mr. Klassen did not sign and return the Declaration/Power of Attorney and Assignment documents to me for delivery to Ms. Redmann. He told me at 3:52 p.m. to return to his address on 2-8-02 anytime before 4:30 p.m.

IN WITNESS WHEREOF, the undersigned has executed this Affidavit on February 8, 2002.



NICOLAS CARRILLO

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

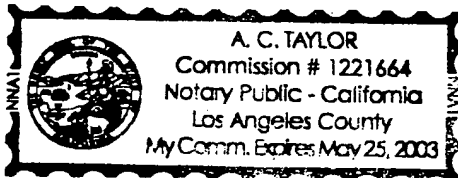
State of California
County of Los Angeles

On Feb. 8, 2002 before me,

A. C. Taylor
NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Nicolas Carrillo
NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

A. C. Taylor
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☒ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S) _____

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL

☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

N/A

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

N/A

DESCRIPTION OF ATTACHED DOCUMENT

Affidavit
TITLE OR TYPE OF DOCUMENT

1
NUMBER OF PAGES

2/8/02
DATE OF DOCUMENT

N/A
SIGNER(S) OTHER THAN NAMED ABOVE

STANLEY R. JONES
LAW OFFICES
1920 MAIN STREET
SUITE 1070
IRVINE, CALIFORNIA 92614-7212
TELEPHONE (949) 475-4400
FAX (949) 852-9878

February 8, 2002

File No. 207.1
Doc. No. 20710208201

VIA FAX AND U.S. MAIL

JoAnne S. Redmann, Esq.
Crosby, Heafey, Roach & May
1901 Avenue of the Stars, Suite 700
Los Angeles, CA 90067

Re: Outland Technologies, Inc./Outland Technologies (USA), Inc.

Dear Ms. Redmann:

Yesterday afternoon, I received a call from my client, James Klassen, informing me of a letter from you with enclosures which had just been delivered to him by messenger. Your letter requested that Mr. Klassen sign an enclosed patent application while the messenger waited, or let the messenger know when to return to pick up the signed application. Approximately ½ hour later, I received from you via messenger apparently the same package that was delivered to Mr. Klassen and your cover letter to me.

The direct delivery of the package to Mr. Klassen without prior notice to me certainly could be construed as a violation of the standstill agreement between our clients if not the Rules of Professional Conduct prohibiting direct contact with represented parties without the prior consent of their counsel. I realize that there was some time pressure involved, but that did not preclude prior notice to me that the package was going to be delivered to Mr. Klassen and/or assurance that I would receive the package before Mr. Klassen did. The time pressure, of course, could have been avoided just by preparing the application sooner than the day before it was due to be filed.

Mr. Klassen, as the inventor, filed the required application in his own name. Unless the settlement being discussed by the parties is consummated, Mr. Klassen has not assigned, and will not assign, the rights to the invention to Outland Technologies (USA), Inc.

Very truly yours,


STANLEY R. JONES

SRJ:mc
cc: James Klassen

RECEIVED

JUL 24 2002

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COPY

PATENT
26537.00100

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

JAMES KLASSEN

Serial No: 10/072,095

Filed: February 8, 2002

For: ROTARY POSITIVE DISPLACEMENT
DEVICE

Art Unit: Not Assigned

Examiner: Not Assigned

**PETITION UNDER 37 C.F.R. § 1.78(a)(6) FOR
ACCEPTANCE OF UNINTENTIONALLY DELAYED
PRIORITY BENEFIT CLAIM**

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July 15, 2002

Date of Deposit

Kathy Hinckley

Name

Signature

07/15/02

Date

Dear Sir:

The above-identified non-provisional patent application having been filed after November 29, 2000, in accordance with 37 C.F.R. § 1.78(a)(6), Applicant respectfully petitions for acceptance of a claim of priority under 35 U.S.C. § 119(e) in the above-identified pending patent application based on provisional application Serial Number 60/267,969 filed on February 8, 2001.

In accordance with 37 C.F.R. § 1.17(t), the Commissioner is hereby authorized to charge the amount of \$1,280.00 to cover the fee for this petition to Deposit Account No. 50-1796, referencing docket number 26537.00100. A copy of this petition is enclosed.

Applicant hereby states that the entire delay between the date the claim was due under 37 CFR § 1.78(a)(5) [that is, June 8, 2002] and the date this claim is being filed was unintentional. With the original filing papers for the instant application, Applicant submitted an unsigned Declaration and Power of Attorney, copy annexed hereto, which indicated a claim of priority of provisional application Serial No. 60/267,969.

An amendment to the instant application is enclosed which inserts a reference to provisional application Serial No. 60/267,969 as required under 37 CFR § 1.78(a)(5).

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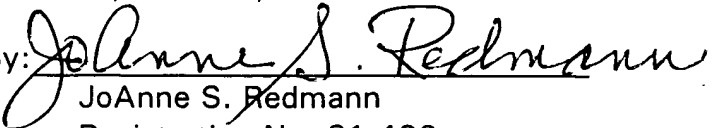
If it should be determined that for any reason either an insufficient fee or an excessive has been paid, please charge any insufficiency or credit any overpayment necessary to the filing of this petition to Deposit Account No. 50-1796, referencing docket number 26537.00100. A copy of this petition is enclosed.

Respectfully submitted,

CROSBY, HEAFEY, ROACH & MAY

Date: July 15, 2002

By:


JoAnne S. Redmann
Registration No. 31,482
Attorney for Applicant(s)

1901 Avenue of the Stars, Suite 700
Los Angeles, CA 90067
Phone: (310) 734-5200
Fax: (310) 734-5299

DECLARATION and POWER OF ATTORNEY

☒ ORIGINAL
☐ CONTINUATION
☐ DIVISIONAL

As a below named inventor, I declare that the information given herein is true, that I believe that I am the original, first and sole inventor (if only one name is listed as 1 below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

ROTARY POSITIVE DISPLACEMENT DEVICE,

the specification of which is attached hereto unless the following box is checked:

☐ was filed on _____ as United States Application Number or PCT International Application Number _____
and was amended on _____

My residence, post office address and citizenship are as stated below next to my name.

I acknowledge my duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations § 1.56(a).

I hereby state that I have reviewed and understand the contents of the above identified specification, including he claims, as amended by any amendment referred to above.

I hereby claim foreign priority benefits under Title 35, United States Code, § 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

PRIOR FOREIGN APPLICATION(S)

COUNTRY	APPLICATION NUMBER	DATE OF FILING Month Day Year	PRIORITY CLAIMED UNDER 35 U.S.C. 119
---------	--------------------	----------------------------------	---

I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

60/267,969 February 8, 2001 pending

(Application Serial No.)

(Filing Date)

(Status)

POWER OF ATTORNEY: As a named inventor, I hereby appoint the following attorney(s) and/or Agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

J. William Wigert, Reg. No. 24,582; JoAnne Redmann, Reg. No. 31,482; Stefan J. Kirchanski, Reg. No. 36,568; Nathan P. Koenig, Reg. No. 38,210; Doyle B. Johnson, Reg. No. 39,240; John W. Carpenter, Reg. No. 39,129; and Tobi C. Clinton, Reg. No. 43,553

.Send correspondence to:

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CROSBY, HEAFEY, ROACH & MAY
1901 Avenue of the Stars, Suite 700
Los Angeles, CA 90067

DIRECT TELEPHONE CALLS TO:
JoAnne S. Redmann
310-734-5277

(Please Print)

1	Name of Inventor	Residence: CITY	STATE or COUNTRY
	James KLASSEN	Irvine	California
	Post Office Address	CITIZENSHIP	
	2253 Martin Street #420C, Irvine, CA 92612	CANADA	
2	Name of Inventor	Residence: CITY	STATE or COUNTRY
	Post Office Address	CITIZENSHIP	
3	Name of Inventor	Residence: CITY	STATE or COUNTRY
	Post Office Address	CITIZENSHIP	
4	Name of Inventor	Residence: CITY	STATE or COUNTRY
	Post Office Address	CITIZENSHIP	

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

SIGNATURE OF INVENTOR 1	SIGNATURE OF INVENTOR 2
DATE	DATE
SIGNATURE OF INVENTOR 3	SIGNATURE OF INVENTOR 4
DATE	DATE

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

JAMES KLASSEN

Serial No: 10/072,095

Filed: February 8, 2002

For: ROTARY POSITIVE DISPLACEMENT
DEVICE

Art Unit: Not Assigned

Examiner: Not Assigned

**PRELIMINARY AMENDMENT TO ASSERT
PRIORITY CLAIM UNDER 35 USC § 119(e)**

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July 15, 2002

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Kathy Hinckley

Name

Signature

07/15/02

Date

Dear Sir:

Prior to examination, please amend the above-referenced pending non-provisional patent application as follows:

IN THE SPECIFICATION:

Please insert as the first sentence of the specification:

-- This application claims the benefit of priority from provisional application
Serial No. 60/267,969 filed February 8, 2001, which application is incorporated by
reference herein in its entirety. --

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REMARKS:

Applicant respectfully submits this amendment to make a claim for priority based on provisional application Serial No. 60/267,969 filed February 8, 2001. The other requirements for claiming benefit of earlier priority have been met as follows:

- 1) The instant application was filed by the same sole inventor as that in provisional application Serial No. 60/267,969, namely James KLASSEN.
- 2) The invention disclosed in the instant application is the same as that disclosed in provisional application Serial No. 60/267,969.
- 3) This non-provisional application was filed not later than 12 months after the filing date of provisional application Serial No. 60/267,969.
- 4) The filing fees in both provisional application Serial No. 60/267,969 and the instant application have been paid.
- 5) This non-provisional patent application having been filed after November 29, 2000, since this claim for priority is being submitted after the time period specified in 37 CFR 1.78(a)(5), it is being accompanied by a "Petition Under 37 C.F.R § 1.78(a)(6) For Acceptance Of Unintentionally Delayed Priority Benefit Claim" with the requisite Petition fee under 37 C.R.F. § 1.17(t).
- 6) Provisional application Serial No. 60/267,969 having been filed in English, no translation is required for submission with this claim of priority.

In view of the foregoing, it is respectfully submitted that the instant application is entitled to the benefit of priority of provisional application Serial No. 60/267,969 in accordance with the requirements of 35 U.S.C. § 119(e).

Applicant therefore requests that the Office amend its records to reflect the priority date of February 8, 2001 for this application, and adjust the projected date of publication accordingly.

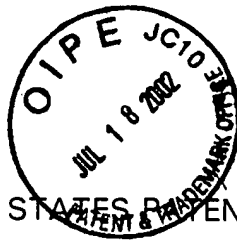
If there are any fees due in connection with the filing of this amendment, please charge the fees to our Deposit Account No. 50-1796, referencing docket number 26537.00100.

Respectfully submitted,
CROSBY, HEAFEY, ROACH & MAY

Date: July 15, 2002

By: JoAnne S. Redmann
JoAnne S. Redmann
Registration No. 31,482
Attorney for Applicant(s)

1901 Avenue of the Stars, Suite 700
Los Angeles, CA 90067
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JAMES KLASSEN

Serial No: 10/072,095

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DEVICE

Art Unit: Not Assigned

Examiner: Not Assigned

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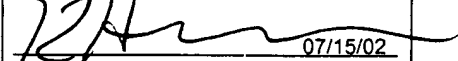
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Kathy Hinckley

Name


Signature

07/15/02

Date

**PETITION TO PROCEED WITH THIS APPLICATION FOR PATENT
UNDER 37 C.F.R. 1.47(b)**

I. INTRODUCTION

The present invention for highly valuable technology (called the "D-2 Technology") is owned by the Applicant, Outland Technologies (USA), Inc. ("Outland USA"), a wholly owned subsidiary of Outland Technologies (Canada), Inc. ("Outland Canada"). After repeated demands, James Klassen ("Klassen"), the sole inventor of the present patent application (hereafter the "D-2 Patent Application"), Serial No. 10/072,095, has failed and refused to execute the declaration for the D-2 Patent Application. Demand to sign the declaration was made on Klassen by delivery to him of the declaration and the D-2 Patent Application at his last known home address of 2253 Martin Street, #420C, Irvine, CA 92612, and through his attorney, Stanley Jones, Esq. at 1920 Main Street, Suite 1070, Irvine, CA 92614. (See attached Declaration of JoAnne S. Redmann in Support of Petition to Proceed with Application for Patent Under 37 C.F.R. 1.47(b) (the "Redmann Decl.," ¶¶s 1 - 5).) Klassen was also requested to sign the

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confirmatory assignment for the D-2 Technology (confirming Outland USA's ownership) and he has failed and refused to do so.

Klassen, and those acting in concert with Klassen, have wrongfully claimed an interest in the ownership in the D-2 Technology. Klassen and his cousin Terry Martin ("Martin"), have failed to execute documents, falsified documents, failed to disclose material information, misrepresented material information, and denied the true ownership of the D-2 Technology, and they have otherwise breached their fiduciary duty to Outland USA and Outland Canada.

In a lawsuit now pending in the United States District Court for the Western District of Washington at Seattle, Case No. CV-02-0229Z (the "District Court Action"), Outland Canada on its behalf and on behalf of Outland USA, has pending claims against Klassen and Martin for, *inter alia*, breach of fiduciary duty, fraud, and conversion of the D-2 Technology. Outland Canada has asked the U.S. District Court to rule that the D-2 Technology is owned by Outland USA without any claim of right by Klassen. Outland USA is confident that, based on the relevant facts, the U.S. District Court will rule that the D-2 Technology is owned by Outland USA. (See Exhibit A, Defendants' First Amended Answer, Affirmative Defenses, and Counterclaims (the "Amended Counter-complaint") filed in response to the Amended Complaint for Declaratory Judgment, Breach of Fiduciary Duty, Tortious Interference with Contract, Breach of Employment Contracts, Failure to Pay Wages, Conversion, Replevin and Appointment of Receiver (attached hereto as Exhibit B, the "Amended Complaint").)

Outland Canada also filed a motion for preliminary injunction in the District Court Action to enjoin Klassen from prosecuting any patent application for the D-2 Technology or transferring or otherwise encumbering the D-2 Technology. In support of its motion, Outland Canada provided the U.S. District Court with more than sufficient facts (through affidavits and documents) to support the U.S.

District Court's finding that it is likely that Outland Canada would prevail on its claim that Outland USA owns the D-2 Technology. That is, based on the facts demonstrated, the U.S. District Court would by the weight of authority in its jurisdiction award title of the D-2 Technology to Outland USA. Those affidavits and declarations are attached hereto and made a part hereof by reference, and confirm that the U.S. District Court would award title of the D-2 Technology to Outland USA. (See Exhibit C1, Defendants' Motion for Preliminary Injunction; Exhibit C2, Declaration of Ken Bell in Support of Defendants' Motion for Preliminary Injunction (the "Bell Decl."); and Exhibit C3, Declaration of Michael Hughes in Support of Defendants' Motion for Preliminary Injunction (the "Hughes Decl.").)

In response to Outland Canada's motion for a preliminary injunction, Klassen entered into a consent stipulation and order (Exhibit D, the "P.I. Order") with Outland Canada that prohibits him from prosecuting any patent application for the D-2 Technology or otherwise transfer or encumber the D-2 Technology.

Outland USA is confident that the District Court Action will conclude with an order from the U.S. District Court assigning the D-2 Technology to Outland USA. The D-2 Patent Application was filed on February 8, 2002, which is that last date for filing while still claiming priority of the earlier provisional application, Serial No. 60/267,969 (the "Provisional D-2 Application"), filed on February 8, 2001. Outland USA must now be permitted to prosecute the D-2 Patent Application while the District Court Action is pending or Outland USA's patent rights will be irreparably damaged.

Outland USA is the only entity authorized to proceed with the D-2 Patent Application as Klassen is now enjoined. If Outland USA is not permitted to prosecute the D-2 Patent Application then the priority date will be lost, and no one will have the right to prosecute the D-2 Patent Application during the pendency of

the District Court Action. To preserve the rights of the parties during the District Court Action, grant of the present petition is necessary. Moreover, Outland USA has entered into agreements with third parties concerning the commercialization of the D-2 Technology. These agreements will be compromised by any delay in the prosecution of the D-2 Patent Application. Thus, if Outland USA does not prosecute the D-2 Patent Application its priority claim will be lost, and the patent rights in the D-2 Technology will be abandoned and lost. Outland USA will suffer a substantial injury that is not accurately measurable or adequately compensable; it will be irreparably harmed.

Outland USA now seeks and is entitled to a determination from the U.S. Patent and Trademark Office, pursuant to 37 C.F.R. 1.47(b), allowing Outland USA to prosecute this D-2 Patent Application.

II. STATUS OF THE D-2 PATENT APPLICATION AND DISTRICT COURT ACTION

On February 8, 2001, while Martin was the President and Klassen was an inventor/employee for Outland USA, Martin had Klassen secretly file the Provisional D-2 Application. Klassen and Martin later left Outland USA in a dispute over control of Outland USA and Outland Canada. After Klassen and Martin left, Outland USA prepared the present D-2 Patent Application claiming priority of Provisional D-2 Application. Outland USA requested that Klassen sign the declaration. Klassen refused. (Redmann Decl., ¶¶ 1 - 5.) Outland USA filed the present D-2 Patent Application on February 8, 2002. Outland USA was advised by Klassen's counsel on February 8, 2002, that Klassen had filed his own nonprovisional patent application for the D-2 Technology (the "Klassen Patent Application"). (Redmann Decl., ¶ 4, Letter from Stanley R. Jones, Esq., Exhibit 2.)

After leaving Outland USA, Klassen and Martin filed suit against Outland Canada (the District Court Action) alleging that they were entitled to

control of Outland USA. (See Exhibit B, Amended Complaint.) The parties attempted to settle their dispute, but to no avail. The Applicant, Outland USA, then received a Notice to File Missing Parts of Nonprovisional Application for this D-2 Patent Application, which was mailed on March 12, 2002.

On April 11, 2002, in the District Court Action, Outland Canada counterclaimed against Klassen and Martin (as described above). (See Exhibit A, Amended Counter-complaint.) On May 2, 2002, Outland Canada filed a motion for preliminary injunction (see Exhibits C1 – C3) providing a factual basis (set forth in documents and affidavits) for its claim that the D-2 Technology belonged to Outland USA, and requesting that Klassen be enjoined from prosecuting the Klassen Patent Application and/or transferring or otherwise encumbering the D-2 Technology. On May 17, 2002, the U.S. District Court entered the P.I. Order by consent of the parties that prohibits Klassen from proceeding with the Klassen Patent Application or any other patent application for the D-2 Technology, or transferring or otherwise encumbering the D-2 Technology. (See Exhibit D.)

III. FACTS

A. KLASSEN AND MARTIN FORM OUTLAND USA

Klassen and Martin formed T&J Enterprises, a general partnership, in the mid-1990s to use Klassen's unique ability to invent new and useful patentable inventions. Then, Klassen and Martin created a second business entity, Outland Design, for that same purpose. (Exhibit C2, Bell Decl. ¶¶ 3 – 4.) Outland Design was and is a technical design and development company managed and controlled by Martin and Klassen (Exhibit B, Amended Complaint, ¶ 18), with Klassen serving as its employee/inventor. Klassen and Martin are members of Outland Design's board of directors.

One of Klassen's earlier inventions is a rotary positive displacement device (the "CvR™ Technology") for use with hydraulic technologies. (Exhibit C2, Bell Decl. ¶ 3.) A patent application was filed by Outland Design for the CvR™ Technology on March 9, 1995 and has since issued as U.S. Patent No. 5,775,196 for Rotary Positive Displacement Engine, issued May 26, 1998. The patent applications for Klassen's other patentable inventions were filed in the name of Outland Design and later Outland USA. (Exhibit C3, Hughes Decl. ¶¶ 9 – 10.)

Beginning with the formation of T&J Enterprises, Klassen and Martin looked for funding to commercialize the CvR™ Technology and other technologies invented by Klassen. To that end, Outland Design entered into a letter agreement dated February 26, 1997 (the "EcoTech Agreement") to establish Outland USA as the company to commercialize the CvR™ Technology, hydraulic technologies and other technologies invented by Klassen. (Exhibit C2, Bell Decl. ¶ 5.)

As part of the EcoTech Agreement, half of the stock of Outland USA was issued to Outland Design in exchange for Outland Design's agreement (a) to assign the CvR™ Technology to Outland USA; and, (b) that all existing and future inventions and technology in the area of hydraulic technologies developed by Outland Design (*i.e.*, Klassen) are owned by Outland USA. (Exhibit C2, Bell Decl. ¶ 5.)

From the beginning, Outland USA was run by Martin as president and chief executive officer. Outland Canada was subsequently formed to market and license the Outland USA technology. The companies were later reorganized so that Outland USA became a wholly-owned subsidiary of Outland Canada. Martin became the chairman of the board for both companies. (Exhibit C2, Bell Decl. ¶ 6.)

To fund the development efforts of Outland USA, Martin and Klassen determined that they needed to continue to raise money. Martin and Klassen

brought in Canadian investors and a Canadian management team (the "Canadian Management"). The Canadian investors recognized and relied upon the substantial value in the inventions and technology owned or to be owned by Outland USA and Klassen's unique role as a substantial beneficial stockholder and employee/inventor for Outland USA.

From April, 2000 through May, 2001, the Canadian investors invested more than \$15 million (Canadian) in Outland Canada. These funds were deposited with Outland Canada and then distributed directly to Outland USA by Outland Canada on an as-needed basis, with the need determined by Martin and Klassen, and their Outland USA management. (Exhibit C2, Bell Decl. ¶¶s 6 - 10.)

Klassen continued to be the driving inventive and technical force behind Outland USA. Outland Canada continued to be the administrative, marketing and funding vehicle for Outland USA.

**B. MARTIN AND KLASSEN HIDE THE D-2 TECHNOLOGY AND
OUTLAND USA'S OWNERSHIP OF IT**

Martin told the Canadian Management that Klassen worked for Outland USA and this employee relationship vested title to the D-2 Technology in Outland USA. Martin created an organization chart for Outland USA that showed that both he and Klassen were Outland USA employees. (Exhibit C2, Bell Decl. ¶ 14, Ex. A.) Klassen worked every day at the Outland USA facilities. He was directed and controlled in his inventive work activities by Martin as president of Outland USA. He worked with and for Edward Hubbard, Vice President of Research and Development as Technical Director, and when Hubbard left the company in late 2000/early 2001, Klassen assumed the position of Vice President of Research and Development. His full-time work for Outland USA consisted of the development of the CvR™ Technology and improvements to it, as well as new developments in hydraulic technology generally, such as the D-2 Technology.

Those individuals that helped him with his work were all employees of Outland USA. His desk, computer, telephone, computer aided design systems and milling machines, and supplies were all those of Outland USA. His employee health insurance was provided for him through Outland USA. His compensation was generated through Outland USA. (To avoid visa problems, Klassen was paid through Outland Design; funds were transferred from Outland USA to Outland Design.) All of Klassen's patent applications for his hydraulic inventions were assigned to Outland USA and the patent applications were prosecuted by Outland USA. (Exhibit C2, Bell Decl. ¶ 15; Exhibit C3, Hughes Decl. ¶¶ 9 - 10.)

On December 22, 2000, Martin told Canadian Management about Klassen's invention of the D-2 Technology and confirmed to Canadian Management that the D-2 Technology belonged of Outland USA. (Exhibit C2, Bell Decl. ¶ 17.) Then, in secret, Martin instructed Outland USA's patent counsel, Michael Hughes, Esq., to file the Provisional D-2 Application without an assignment to Outland USA. (Exhibit C3, Hughes Decl. ¶¶ 5, 7, and 9.) All previous patent applications for hydraulic technologies were assigned to Outland USA. When questioned by Hughes regarding the filing of the Provisional D-2 Application in the name of Klassen and not Outland USA, Martin told Hughes that everything was going to be worked out with "Outland" and he should not worry. (Exhibit C3, Hughes Decl. ¶ 5.) Hughes was later instructed by Martin to take the Provisional D-2 Application to his home and keep it there. The prototypes built for the device embodying the D-2 Technology were kept in the Outland USA safe on its premises in Irvine, California. Files related to the D-2 Technology were worked on and kept on Klassen's Outland USA company computer.

After secretly filing the Provisional D-2 Application, Martin tried to unsuccessfully "sell" the D-2 Technology (which was already owned by Outland USA) to Outland USA for approximately \$1.7 million by trying unsuccessfully to

convince Canadian Management that Outland USA did not own the D-2 Technology. (Exhibit C2, Bell Decl. ¶ 23.) Then, in late 2001, Martin claimed to Canadian Management that Klassen did not work for Outland USA; Martin demanded that Outland Canada pay him and Klassen additional money for the D-2 Technology or they would leave and take the D-2 Technology with them.

As an employee/inventor for Outland USA, Klassen worked in a position of trust and confidence. He owed a duty to Outland USA to not act in a manner that was inconsistent with his duty to his employer. In addition, Klassen was and is a beneficial and substantial stockholder in Outland USA; Klassen had a fiduciary duty to act in the best interests of Outland USA. Klassen has failed to act according to his fiduciary duty to Outland USA.

To date, Klassen has not executed the assignment for the D-2 Technology to Outland USA, and has failed and refuses to sign the declaration for the D-2 Patent Application. Instead, Klassen left Outland USA with Martin and then filed suit against Outland Canada and members of the Canadian Management (the District Court Action).

IV. OUTLAND CANADA IS ENTITLED TO PROSECUTE THE D-2 PATENT APPLICATION

Prosecution of the D-2 Patent Application by Applicant (Outland USA) is authorized under 37 C.F.R. 1.47 which states a party with "sufficient proprietary interest in the matter justifying such action may make an application for patent on behalf of and as an agent for all of the inventors." Outland USA brings this petition to prosecute the D-2 Patent Application on its behalf and as agent for James Klassen pursuant to the noted code section.

Outland USA owns all D-2 Technology patent rights because (1) Klassen was an employee of Outland USA; (2) Klassen was hired by Outland USA to invent; and (3) an employee that is hired to invent is obligated to assign his

inventions to his employer. In addition, Outland USA owns the D-2 Technology by virtue of Klassen's fiduciary relationship with Outland USA.

The very nature of patents weighs heavily in favor of permitting Outland USA to proceed here. This request is particularly compelling as the D-2 Patent Application claims priority based upon the filing date of the Provisional D-2 Application, and Klassen is now enjoined by the P.I. Order from making any application on his own behalf; only Outland USA may currently prosecute the D-2 Patent Application. Outland USA should be permitted to proceed to preserve the rights of the parties in the D-2 Technology as Klassen may not now proceed. If Outland USA is not permitted to proceed, it will be irreparably harmed in that its patent protection for the D-2 Technology and its priority date to which it is entitled will be substantially compromised or lost. As the possibility of irreparable injury is so significant, Outland USA's present petition should be granted.

A. OWNERSHIP OF TECHNOLOGY

Ownership of technology springs from its invention. As many inventions occur in the context of an employer/employee relationship, disputes regarding ownership of patentable inventions may arise between an employer and an employee, or fiduciary. For employees, the employer will have ownership if the employer contracted with the employee for such ownership. "[C]ontract law allows individuals to freely structure their transactions and employee relationships. An employee may thus freely consent by contract to assign all rights in inventive ideas to the employer." Teets v. Chromalloy Gas Turbine Corp., 83 F.3d 403, 407 (Fed. Cir. 1996).

Where an inventor/employee enters into an employment contract that conveys his inventions to his employer, the rights and liabilities of the employer and the employee are determined by the metes and bounds of the employment

contract. State courts apply general principles of contract and property law to transactions regarding patent ownership unless it interferes with federal patent policy. See, Farmland Irrigation Co., Inc. v. Dopplmaier, 48 Cal. 2d 208, 217; 308 P.2d 732, 737 (1957). State law generally governs ownership rights in patentable inventions. However, state law (including the State of Washington and most other states) usually follows leading U.S. Supreme Court decisions relating to ownership of patentable inventions. As a consequence, the state law from state to state of patent ownership in the context of employment relationships is generally uniform. See, for example, Daniel Orifice Fitting Co. v. Whalen et al., 198 Cal. App. 2d 791, 18 Cal. Rptr. 659 (1962) (a former officer/employee enjoined from competing and ordered not to disclose ideas developed while an employee and to assist in obtaining patent rights; employee's duties as chief engineer, included designing and supervising the design of products).

Under state law, an employees may and do contract away rights in their inventions. Even if an employee has not signed a written contract, his employer may never the less own his invention. If an employee is hired to invent, his inventions made during the duration of his employment belong to his employer – a contract to assign is implied. Thus, even in situations where the employee has not executed the contract, an employer may still own an employee's invention under the theory of an implied-in-fact contract (i.e., the employee exercised his inventive faculties for the employer) to assign patent rights. "An implied-in-fact contract is an agreement 'founded upon a meeting of the minds, which, although not embodied in an express contract, is inferred, as a fact from conduct of the parties showing, in the light of the surrounding circumstances, their tacit understanding.' Baltimore & Ohio R.R. v. United States, 261 U.S. 592, 597, 67 L.Ed. 816, 43 S.Ct. 425 (1923)." Teets v. Chromalloy Gas Turbine Corp., *supra*. In such situations, contracts to invent are implied between the employee and the

employer, with state contract principles governing these implied-in-fact contracts. Erie Railroad v. Tompkins, 304 U.S. 64 (1938).

B. OUTLAND USA OWNS THE D-2 TECHNOLOGY

1. Klassen was an Employee of Outland USA

At the time that Klassen invented the D-2 Technology, Outland USA was located in the State of Washington. (Exhibit C3, Hughes Decl. ¶¶ 4 and 8.) The facts, evaluated under the relevant law of the State of Washington (where Klassen was employed by Outland USA at the time he invented the D-2 Technology), confirm Klassen was an employee of Outland USA.

Under Washington law, "the chief, and most decisive, factor in determining whether the relationship is that of employer and employee ... is the right of control over the work or thing to be done." Miles v. Pound Motor Co., 10 Wn.2d 492, 506, 117 P.2d 179 (1941) (distinguishing employees from independent contractors). Other considerations may include "the nature of the business, the time, place, duration, quantity, and nature of the work performed, the skill and supervision required, the furnishing of equipment, materials, and supplies, the payment of the necessary expenses, the basis of compensation for the work, the right to hire and discharge assistants, and the right to terminate the employment." Id. See also Marquis v. City of Spokane, 130 Wn.2d 97, 110, 922 P.2d 43 (1996); Sills v. Sorenson, 192 Wash. 318, 324, 73 P.2d 798 (1937); Hollingsworth v. Robe Lumber Co., 182 Wash. 74, 77, 45 P.2d 614 (1935).

Outland USA was in control of Klassen's inventive work on the D-2 Technology. As discussed in the Facts section above, Klassen worked at Outland USA, was managed by Outland USA, and was assisted by other Outland USA employees. (Exhibit C2, Bell Decl. ¶ 19.) He received all of his equipment and material from Outland USA, was on the Outland USA health insurance plan, and

was paid by Outland USA (through Outland Design for purposes of his U.S. work visa). (Exhibit C2, Bell Decl. ¶¶ 9 and 19.) Looking to the "right of control," the specific tasks assigned and all the other factors, a Washington court (the U.S. District Court) should determine that Klassen was an employee of Outland USA at the time he invented the D-2 Technology and that Outland USA owns the D-2 Technology.

2. Klassen Was An Inventor for Outland USA

Outland USA was created to commercialize the hydraulic technologies, and other technologies invented by Klassen; the whole purpose of Outland USA was to commercialize Klassen's inventions. Klassen was employed – and paid – specifically to invent such hydraulic technologies, and did so, both in terms of improvements to the CvR™ Technology as well as the D-2 Technology itself. (Exhibit C2, Bell Decl. ¶ 17.)

Disputes between employers and employees over ownership of patent rights have been well litigated in the courts of this country. See McClurg v. Kingsland, 42 U.S. (1 How.) 202, 11 L.Ed. 102 (1843). It is "well-settled at the general level ... [that] an employer owns employee inventions if the employee was specifically hired to exercise his or her 'inventive faculties.'" 8 DONALD S. CHISUM, *Chisum on Patents*, §22.03 (2001) at 22-11. See Standard Parts Co. v. Peck, 264 U.S. 52, 59-60, 44 S.Ct. 239, 68 L.Ed. 560 (1924) holding that an invention is the property "of him who engaged the services and paid for them." See also United States v. Dubilier Condenser Corp., 289 U.S. 178, 187-188, 53 S.Ct. 554, 77 L.Ed. 1114 (1933). "When the purpose for employment thus focuses on invention, the employee has received full compensation for his or her inventive work." Teets v. Chromalloy Gas Turbine Corp., *supra*, and the invention belongs to the employer.

As noted above, questions of patent ownership, unlike issues regarding inventorship, are contract issues to which state contract principles apply. Erie Railroad v. Tompkins, *supra*. Klassen's obligation to assign his inventions under this rule arises pursuant to an implied-in-fact contract between Klassen and Outland USA. *See Teets*, 83 F.3d at 407. An implied-in-fact contract arises out of the parties' conduct, as opposed to one that arises out of a written or oral agreement. *See Plumbing Shop v. Pitts*, 67 Wn.2d 514, 517, 408 P.2d 382 (1965).

For this principle to apply, the employment relationship at the time of the inventive work is examined to determine if the parties had an implied-in-fact contract to assign patent rights. In resolving particular disputes, the courts must balance the policies of the patent system with those of contract law. Evidentiary factors that carry weight are: 1) previous patent assignments for other inventions by the employee; 2) custom and practice for other similarly situated employees to assign; (3) if the invention was conceived during the time of employment; (4) who originally posed the problem solved by the invention; 5) the employee's authority within the company to determine to whom to give a problem for solution; 6) the relative importance of the idea to the employer's business; 7) a previous inconsistent position on other inventorship by the employer; 8) an agreement by the employer to pay royalties to the employee; 9) payment of patent procurement expenses by the employer or employee; and 10) the absence of initial interest by the employer when the employee first exposed the idea. *Chisum*, *supra* at §22.03. For example, an employer claimed an employee's inventive work where the employer specifically hires or directs the employee to exercise inventive faculties. United States v. Dubilier Condenser Corp., 289 U.S. 178, 187 (1933); Standard Parts Co. v. Peck, 264 U.S. 52, 59-60 (1924).

Here, all previous hydraulic technology patent applications were assigned by Klassen to Outland USA. No other individuals conceived inventions for Outland USA. Klassen was responsible for inventing hydraulic technologies for Outland USA. All Klassen's previous patent applications for hydraulic technologies were assigned to Outland USA, and Outland USA paid for and controlled the prosecution of these patent applications. (Exhibit C3, Hughes Decl. ¶¶ 5, 9 and 10.)

The evidentiary factors noted above confirm that Klassen was an employee/inventor of Outland USA. And, while there are a number of evidentiary factors which may be considered in the determination of whether an employment is "an employment to invent," a "primary factor ... is the specificity of the task assigned to the employee." Chisum § 22.03[2] at 22-30. Klassen's tasks were specific. Not only was he employed and paid to invent hydraulic technologies, but the corporation itself was formed specifically to raise funding and commercialize Klassen's hydraulic technology inventions. (Exhibit C2, Bell Decl. ¶ 7.) The core business of Outland USA was the commercialization of the hydraulic technologies invented by Klassen. Just as there is no dispute that the CVR™ Technology belongs to Outland USA, or that the CVR™ Technology improvements belong to Outland USA, there should be no dispute that the D-2 Technology belongs to Outland USA.

3. Klassen Is Obligated To Assign His Inventions to Outland USA

Klassen was working on inventions in the area of hydraulic technology for Outland USA, and the D-2 Technology is hydraulic technology. An individual employed to make an invention, who succeeds, during his term of service, in accomplishing that task, is bound to assign to his employer any patent obtained. Klassen has only produced that which he was employed to invent. Klassen was employed to give his time and scientific skills for the purpose of trying to discover

and improve hydraulic technologies. In other words, he was paid during the period of his employment for the application of his inventive powers and any resultant inventions; the D-2 Technology belongs to Outland USA.

All hydraulic inventions of Klassen were previously assigned to and owned by Outland USA. The D-2 Technology is no exception. Klassen now wrongfully claims an interest in the D-2 Technology, however, conduct of both parties described above created an implied-in-fact contract for him to continue to execute assignments and assign *all* such technologies. That was the whole point of employing him, and paying him, as an inventor. Outland USA, "[h]aving given consideration for inventive services and having assumed the risk that such services might not be successful, ... should receive as the benefit of the bargain any resulting intellectual property rights." Chisum, supra, § 22.03[2] at 22-30. Klassen is obligated to assign to Outland USA the D-2 intellectual property rights.

4. Klassen was a Fiduciary of Outland USA and Should Assign the D-2 Technology Based on his Fiduciary Relationship with Outland USA

Outside of the employment relationship, an employer may be the beneficial owner of a patent for an invention made by a person who occupies a position of special trust in the employer organization, such as a director, officer or stockholder. Fiduciaries such as partners, managers, shareholders, officers, directors and others in similar capacities are under additional obligations (beyond those of just employees) by common law to assign their inventions and patents. The theory of corporate opportunity is often relied upon by the courts in finding that the fiduciary must assign his patentable invention to the company. That is, the fiduciary owes a greater duty of loyalty to the company as a fiduciary and his inventions are a corporate opportunity which belong to the company. In Mechanical Plastics Corp. v. Thaw, 197 U.S.P.Q. 651 (1977 N.Y. Misc.) the

assignment of patents was required of defendant who was chief operating officer. The New York court held that the defendant owed fiduciary duty of loyalty to corporate plaintiff and in this position of fiduciary, his inventions were for the benefit of the company.

Klassen was the inventive force behind Outland USA. At the time of the invention of the D-2 Technology, Klassen was the inventor/employee and a beneficial owner, with Martin, of almost half the stock of Outland USA. Martin and Klassen led the Canadian Management of Outland Canada to believe that all of Klassen's work in his inventive capacity in any area related hydraulic technology, including the D-2 Technology was for the benefit of Outland USA.

Where an inventor occupies a position of trust and confidence to the business, it has been held to be inequitable for that individual to retain title to an invention that more properly belongs with the business. The individual is compelled to assign his interest in the invention to the business. Kennedy v. Wright, 676 F. Supp. 888 (C.D. Ill. 1988). The court in Kennedy, found that Kennedy used company finances and facilities to bring about the inventions and the company used the patented technology to generate its business. The patents were "manifestly important to the financial well being of the company." Id. at 893. Kennedy's claim of title to the patents would have usurped the corporate opportunity of the company. The Kennedy court required Kennedy to assign the patents, reasoning that Kennedy was in a special position of confidence and trust with the business.

Here, the D-2 Technology is hydraulic technology that is the core business of Outland USA. Klassen was the inventive force behind Outland USA's technology development in the hydraulic area. Klassen was a fiduciary of Outland USA when he invented the D-2 Technology. He was a beneficial stockholder and insider at Outland USA. As a fiduciary the D-2 Technology was invented by

Klassen on behalf of Outland USA and for Outland USA. In his fiduciary capacity, it is "only consistent with good faith that he should recognize [the company's] ownership of the patent issued to him,' the entire right and interest in the patent * * * belong to the company despite absence of a specific contract by the inventor to assign the invention. Dowse v. Federal Rubber Co., 254 Fed. 308, 310 (N.D. Ill. 1918)." LeFiell v. United States, 162 Ct. Cl. 865, 138 U.S.P.Q. 312 (Ct. Cl. 1963).

C. OUTLAND USA's PETITION SHOULD BE GRANTED

Outland USA owns the D-2 Technology. Outland USA can clearly demonstrate so. To prevail on a petition under 37 C.F.R. 1.47(b), Outland USA must demonstrate that a court of competent jurisdiction would by the weight of authority in that jurisdiction award title of the invention to the Applicant. Outland USA has demonstrated here that Klassen was an inventor/employee of Outland USA, vesting title and ownership of the D-2 Technology with Outland USA.

Outland USA has demonstrated that a court of competent jurisdiction -- the U.S. District Court in the District Court Action -- will award title of the D-2 Technology to Outland USA. (And, Klassen has stipulated to the P.I. Order that enjoins him from taking any action related to the D-2 Technology.) Thus, Outland USA has demonstrated that the U. S. District Court will confirm the D-2 Technology ownership in Outland USA. To preserve the rights of the parties and avoid irreparable damage to Outland USA, its petition should now be granted.

V. CONCLUSION

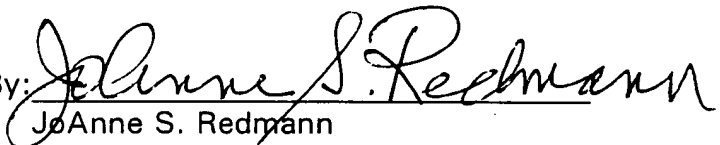
Under the Patent Act, 35 U.S.C. § 111 provides that "an application for patent shall be made, or authorized to be made, by the inventor...." Because Klassen was an employee/inventor for Outland USA, Outland USA holds equitable title to the D-2 Technology; Outland USA should be authorized to prosecute the

D-2 Patent Application. Outland USA's petition should be granted as it has satisfied the requirements for proceeding under 37 C.F.R. 1.47(b). For the reasons set forth above, Outland USA respectfully requests that its petition to proceed under 37 C.F.R. 1.47(b) be granted.

The Commissioner is authorized to charge the petition fee of \$130 and any underpayment to Deposit Account No. 50-1796, referencing docket number 26537.00100. A copy of this document is enclosed.

Respectfully submitted,
CROSBY, HEAFEY, ROACH & MAY

Date: July 15, 2002

By: 
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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OUTLAND TECHNOLOGIES (USA), Inc., a)
Washington corporation; OUTLAND)
DESIGN TECHNOLOGIES, INC., a)
Washington corporation; UNICK)
INVESTMENTS, LLC, a Washington limited)
liability company; TERRY MARTIN, as)
director of Outland Technologies (USA), Inc.,)
JAMES IRELAND, as a director of Outland)
Technologies (USA) Inc., CRAIG FORHAN,)
as a director of Outland Technologies (USA),)
Inc.; STEVE FRYER, as a director of Outland)
Technologies (USA), Inc.; and JAMES)
KLASSEN, as a director of Outland)
Technologies (USA), Inc.,)

Plaintiffs,

vs.

OUTLAND TECHNOLOGIES, INC., an)
Alberta Canada corporation; TERRY)
KNIGHT; KEN BELL; and GARRY)
MIHAICHUK,)

Defendants.

NO. CV02-0229Z

**DEFENDANTS' FIRST AMENDED
ANSWER, AFFIRMATIVE DEFENSES,
AND COUNTERCLAIMS**

Defendants, OUTLAND TECHNOLOGIES, INC. ("Outland Canada"), TERRY
KNIGHT, KEN BELL and GARRY MIHAICHUK ("Defendants"), hereby answer and
otherwise respond to Plaintiffs' Complaint for Declaratory Judgment (the "Complaint").

ANSWER

I. PARTIES

1. Defendants admit that Outland USA is a corporation organized and existing under the laws of Washington which has qualified to do business and has done business in California at a principal place of business located at 17032 Murphy Avenue, Irvine, Orange County, California. Defendants deny that Outland USA is doing business in California any longer. Defendants deny that Outland USA does business in Lynden, Whatcom County, Washington.

2. Defendants admit that Outland Design is a corporation organized and existing under the laws of Washington. Defendants do not have sufficient information to admit or deny that Outland Design has qualified to do business in California. Defendants believe that at all times relevant hereto Outland Design was doing business in California at Outland USA's principal place of business located at 17032 Murphy Avenue, Irvine, Orange County, California. Defendants lack sufficient knowledge or information to admit or deny that Outland Design is currently doing business at 19200 Von Karman Avenue, Suite 600, Irvine, Orange County, California or that Outland Design also does business in Lynden, Whatcom County, Washington.

3. Defendants lack sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations contained in paragraph .03 of the Complaint.

4. With respect to paragraph .04 of the Complaint, Defendants admit that plaintiff Terry Martin is an individual who did reside in Orange County, California. Defendants do not know where Mr. Martin currently resides. Defendants lack sufficient knowledge and information to admit or deny the allegation that Mr. Martin was a member of the Board of Directors of Outland USA. Defendants state further that on or about November 22, 2001 Outland Canada (the sole stockholder of Outland USA) appointed a new Board of Directors for Outland USA (being the same individuals who sat on the Board of Directors for Outland Canada). This new Board of Directors (the "New Board") consisted of defendants Ken Bell, Terry Knight and Garry Mihaichuk, and plaintiffs Terry Martin and Craig Forhan. The New

1 Board suspended operations of Outland USA and Outland Canada to complete a business audit
2 by independent third parties and empowered Garry Mihaichuk, as the only "outside" director of
3 Outland Canada, with broad authority to act on the New Board's behalf to investigate the
4 operations of Outland USA. At that time, all duties of all employees--including those of Mr.
5 Martin as president of Outland USA--were suspended pending completion of the audit.
6 Defendants lack sufficient knowledge and information to admit or deny the "purposes of this
7 action."

8 5. With respect to paragraph .05 of the Complaint, Defendants lack sufficient
9 knowledge and information to admit or deny that plaintiff James Ireland is an individual residing
10 in Orange County, California. Defendants lack sufficient knowledge and information to admit or
11 deny the allegation that Mr. Ireland was a member of the Board of Directors of Outland USA.
12 Defendants lack sufficient knowledge and information to admit or deny the "purposes of this
13 action."

14 6. With respect to paragraph .06 of the Complaint, Defendants lack sufficient
15 knowledge and information to admit or deny that plaintiff Craig Forhan is an individual who
16 resides in Orange County, California. Defendants lack sufficient knowledge and information to
17 admit or deny the allegation that Mr. Forhan was a member of the Board of Directors of Outland
18 USA. Defendants lack sufficient knowledge and information to admit or deny the "purposes of
19 this action."

20 7. With respect to paragraph .07 of the Complaint, Defendants lack sufficient
21 knowledge and information to admit or deny that plaintiff Steve Fryer is an individual who
22 resides in Orange County, California. Defendants lack sufficient knowledge and information to
23 admit or deny the allegation that Mr. Fryer was a member of the Board of Directors of Outland
24 USA. Defendants lack sufficient knowledge and information to admit or deny the "purposes of
25 this action."

1 8. With respect to paragraph .08 of the Complaint, Defendants admit that plaintiff
2 James Klassen is an individual who resided in Orange County, California. Defendants do not
3 know where Mr. Klassen currently resides. Defendants deny that Mr. Klassen was ever a
4 member of the Board of Directors of either Outland USA or Outland Canada. Mr. Klassen is a
5 substantial beneficial stockholder in Outland Canada and has a fiduciary relationship with
6 Outland USA and Outland Canada by virtue of his ownership of stock in plaintiff Outland
7 Design (Outland Design is one of the major stockholders of Outland Canada) and his position as
8 inventor and Vice-President – Intellectual Property Design for Outland USA. Defendants lack
9 sufficient knowledge and information to admit or deny the “purposes of this action.”

10 9. Defendants admit that Outland Canada is a corporation organized and existing
11 under the laws of Alberta, Canada and does business in Alberta Canada. Defendants further
12 admit that Outland USA previously did business in Orange County, California but recently
13 relocated those operations to Calgary, Canada.

14 10. Defendants deny that Terry Knight is “a senior vice-president for corporate
15 compliance and securities” of Outland Canada. His correct title is Senior Vice-President and
16 Corporate Counsel of Outland Canada. Defendants admit the remaining allegations of paragraph
17 10 of the Complaint.

18 11. Defendants deny that Ken Bell is “a vice-president for Investor relations” of
19 Outland Canada. His correct title is Vice-President Corporate Development and Secretary of
20 Outland Canada. Defendants admit the remaining allegations of paragraph 11 of the Complaint.

21 12. Admitted. Defendants further affirmatively allege that Mr. Mihaichuk is
22 Chairman of the Board of Directors of Outland Canada.

23 13. Denied.

24 II. JURISDICTION/VENUE

25 14. Defendants admit that plaintiffs Outland USA and Outland Design are
Washington corporations. Defendants deny that Outland USA is doing business in Whatcom

1 County, Washington. Defendants lack sufficient knowledge or information upon which to form
2 a belief as to the truth or falsity of Plaintiffs' allegations related to Unick Investments or Outland
3 Design in paragraph 14 of the Complaint.

4 15. Denied. Defendant Outland Canada is the sole shareholder of Outland USA and
5 defendant Outland Canada claims right, title and interest in one or more bank accounts
6 maintained by Outland USA.

7 16. Defendants admit that the Superior Court of Washington for Whatcom County
8 has jurisdiction of this matter pursuant to RCW 14.12010 et seq. and RCW 7.24010 et seq.
9 However, jurisdiction is also proper in the United States District Court for the Western District
10 of Washington.

11 III. FACTS

12 17. Admitted. Outland USA is also in the business of developing, designing and
13 licensing hydraulic technology and other technology.

14 18. Defendants admit that Outland USA is a wholly owned subsidiary of Outland
15 Canada. Defendants deny the remaining allegations contained in paragraph 18 of the
16 Complaint.

17 19. Defendants deny that Unick Investments and Outland Design own 52% of the
18 voting shares of Outland Canada. Defendants admit that Mr. Knight and Mr. Bell are minority
19 shareholders in Outland Canada (although Mr. Bell is the second largest shareholder of record in
20 Outland Canada, behind Outland Design), while Mr. Mihaichuk is not an officer but is a
21 shareholder in Outland Canada. Defendants do not have sufficient information or belief to admit
22 or deny whether plaintiff Forhan controls plaintiff Unick Investments. Defendants do not have
23 sufficient information to admit or deny whether plaintiffs Martin and Klassen own 60% of and
24 control plaintiff Outland Design.

25 20. Admitted.

1 21. Denied. As stated in paragraph .4 above, on or about November 22, 2001,
2 Outland Canada (the sole stockholder of Outland USA), appointed a new Board of Directors for
3 Outland USA. The New Board consisted of defendants Ken Bell, Terry Knight and Garry
4 Mihaichuk, and plaintiffs Terry Martin and Craig Forhan--the same board members as the board
5 of directors for Outland Canada.

6 22. Admitted.

7 23. Defendants deny that plaintiffs Martin and Forhan did not have sufficient notice
8 to arrange transportation and attend the November 22, 2001 meeting. Plaintiffs Martin and
9 Forhan were served with notice of the meeting in accordance with the bylaws of Outland
10 Canada. Defendants admit that Messrs. Martin and Forhan participated in the meeting by
11 telephone.

12 24. Denied.

13 25. Admitted.

14 26. Defendants deny all allegations contained in paragraphs 26, 26.1, 26.2, and 26.3
15 of the Complaint.

16 27. Defendants admit that on or about November 23, 2001, the New Board suspended
17 operations of Outland USA in order to have independent third parties perform an audit of
18 Outland USA's operations. To ensure that books and records, capital assets and valuable
19 intellectual property of Outland USA would not be removed from the business premises during
20 the audit, security guards were posted at the premises leased by Outland USA at 17032 Murphy
21 Avenue, Irvine, California (the "Outland USA Premises"). On the afternoon of November 22,
22 2001, prior to the posting of the security guards, defendant Knight advised plaintiff Martin that
23 the guards would be posted. In addition, the locks were changed at the Outland USA Premises.
24 All employees of Outland USA, including those plaintiffs who were employees, were paid their
25 salaries but were denied access to the Outland USA Premises during the audit. Defendants deny
that these actions were taken without notice. Plaintiffs participated in the November 22, 2001

1 board meeting and had full knowledge of the suspension of business operations and changes to
2 the Board of Directors of Outland USA. There were discussions at the board meeting with
3 respect to "securing operations." In fact, there was a resolution passed by the board authorizing
4 any steps necessary in this regard. Moreover, Mr. Martin instructed Mr. Klassen to post a notice
5 outside the Outland USA Premises instructing employees not to enter until further notice. These
6 actions were necessary to ensure the integrity of the books and records, capital assets and
7 valuable intellectual property of Outland USA. Defendants deny that these actions were
8 wrongful in any way. Defendants deny the second and third sentences of paragraph .27 of the
9 Complaint.

10 28. Admitted.

11 29. Defendants admit that since November 23, 2001, the New Board has denied
12 plaintiffs unescorted access to the Outland USA Premises. Defendants deny the remaining
13 allegations contained in paragraph .29 of the Complaint.

14 30. Denied.

15 31. Denied.

16 32. Denied.

17 **IV. CAUSE OF ACTION—DECLARATORY JUDGMENT, RCW 7.24**

18 33. Defendants incorporate paragraphs 1 through 32 set forth above as their response
19 to paragraph .33 of the Complaint.

20 34. Defendants admit that a controversy exists between plaintiffs and the defendants
21 concerning their respective contractual and statutory rights and duties. Defendants deny that any
22 actions taken by defendants have been without proper corporate authority, without legal
23 authority, have been deceptive, fraudulent and oppressive, and/or have endangered the best
24 interests of Outland USA.

25 35. Defendants assert that Defendants' actions have been proper and taken with
proper legal and corporate authority, and deny any contention to the contrary.

1 36. Defendants lack sufficient knowledge or information upon which to form a belief
2 as to the truth or falsity of Plaintiffs' desires and therefore deny the allegations contained in
3 paragraph .36 of the Complaint.

4 37. Defendants lack sufficient knowledge or information upon which to form a belief
5 as to the truth or falsity of Plaintiffs' desires and therefore deny the allegations contained in
6 paragraph .37 of the Complaint.

7 38. Defendants lack sufficient knowledge or information upon which to form a belief
8 as to the truth or falsity of Plaintiffs' desires and therefore deny the allegations contained in
9 paragraph .38 of the Complaint.

10 39. Defendants deny that a judicial declaration is necessary and appropriate.
11 Defendants affirmatively state that plaintiffs commenced a similar action on or about November
12 27, 2001, *Outland Technologies (USA), Inc. v. Outland Technologies (Canada), Inc.*, Case No.
13 CV-01-1028MMM, asking the California court to grant to plaintiffs substantially the same
14 equitable relief now requested in the Complaint. Thereafter, the plaintiffs filed an action in the
15 Court of Queen's Bench, judicial district of Calgary, Alberta, In the Matter of Outland
16 Technologies, Inc., Action No. .0101-21883, requesting substantially the same relief as requested
17 in the California action. Plaintiffs then dismissed the California action. The Canadian court
18 dismissed plaintiffs' request for equitable relief and required only that the Outland Canada board
19 meet to address the reopening of the Outland USA Premises. That meeting took place, and no
20 other request for equitable relief is currently pending in the Canadian action. Thereafter,
21 plaintiffs filed this action requesting substantially the same relief as requested in the California
22 action and the Canadian action. As the Canadian court has already considered plaintiffs' request,
23 defendants deny that another judicial declaration is now necessary or appropriate and urge this
24 Court to deny the Plaintiffs' request.
25

1 **SEPARATE AND AFFIRMATIVE DEFENSES**

2 Defendants assert the following affirmative defenses to the claims for relief set
3 forth in the Complaint:

4 40. Defendants deny each and every allegation, averment, conclusion of law, and
5 other statement not specifically admitted in this Answer.

6 41. Plaintiffs' Complaint fails to state any claim upon which relief may be granted.

7 42. Proper notice was provided to plaintiffs of the meeting of the members of the
8 Board of Directors of Outland USA held on November 22, 2001 and at all times thereafter.

9 43. The New Board was within its corporate and legal rights when it took possession
10 of the Outland USA Premises, changed the locks, posted guards, and prevented its employees,
11 including certain of the Plaintiffs, from accessing the Outland USA Premises without an escort.

12 44. At all times, Defendants acted within their corporate and legal authority.

13 45. All action taken by defendants was proper and in accordance with the business
14 judgment rule.

15 **COUNTERCLAIMS**

16 Defendant, Outland Technologies, Inc., asserts the following counterclaims
17 against Plaintiffs Martin, Klassen, Forhan and Outland Design:

18 **I. GENERAL ALLEGATIONS**

19 1. Plaintiff and Counterclaim defendant James Klassen, an inventor, and his cousin,
20 Plaintiff and Counterclaim defendant Terry Martin, formed T&J Enterprises, a general
21 partnership in the mid-1990s to use Klassen's unique ability to invent new and useful patentable
22 inventions. Thereafter, Klassen and Martin created a second business entity, Outland Design, for
23 that same purpose. At least 70% of the outstanding stock of Outland Design was owned by T&J
24 Enterprises until Martin and Klassen brought in additional investors in August of 1998. At that
25

1 time, T&J Enterprises retained control of Outland Design by maintaining more than 60% of the
2 outstanding stock of Outland Design.

3 2. Outland Design was and is a technical design and development company
4 managed by Martin and Klassen, with Klassen serving as its employee/inventor. Klassen is a
5 Canadian citizen. He obtained a visa to work in the United States through Outland Design. Both
6 Klassen and Martin are members of Outland Design's board of directors.

7 3. One of Klassen's inventions is a rotary positive displacement device and related
8 technology (the "CvR™ Technology") for use with hydraulic and other technologies. The
9 CvR™ Technology has potential application as a rotary positive displacement engine and is
10 potentially capable of being used with different types of fluids as an engine or a positive
11 displacement pump.

12 4. A patent application was filed for the CvR™ Technology on March 9, 1995 on
13 behalf of Outland Design. The patent applications for Klassen's other patentable inventions were
14 filed in the name of Outland Design, and later, Outland USA.

15 5. Beginning with the formation of T&J Enterprises, Klassen and Martin looked for
16 funding to commercialize the CvR™ Technology and other technologies invented by Klassen.
17 To that end, in a letter agreement dated February 26, 1997 (the "EcoTech Agreement"), Outland
18 Design (i.e., Martin and Klassen) and a group of Canadian individuals organized as EcoTech
19 Canada Ltd. ("EcoTech"), agreed to establish a new company – Outland Hydraulics, Inc.—later
20 renamed Outland USA. The EcoTech Agreement provided that EcoTech would form a new
21 Alberta holding company (the "Canadian Holding Company") to purchase 50% of the shares of
22 Outland USA for US \$300,000.

23 6. As part of the EcoTech Agreement, the remaining 50% of the stock of Outland
24 USA was issued to Outland Design (i.e., Martin and Klassen) in exchange for Outland Design's
25 agreement (a) to assign the CvR™ Technology to Outland USA; and, (b) that all existing and
future inventions and technology in the area of hydraulic technologies developed by Outland

1 Design (i.e., Klassen) are owned by Outland USA. Under the EcoTech Agreement, Outland
2 USA also had the right of first refusal to any other inventions and technologies developed by
3 Outland Design outside the area of hydraulic technologies.

4 7. As provided in the EcoTech Agreement, Outland Design (i.e., Klassen and
5 Martin) and the Canadian Holding Company were issued the stock of Outland USA. Outland
6 USA began operations to commercialize the inventions and technologies of Klassen (particularly
7 in the area of hydraulic technologies) assigned to it by operation of the EcoTech Agreement.

8 8. From the beginning, Outland USA was run by Martin as president and chief
9 executive officer. Martin was also the chairman of the board of directors for Outland USA.
10 Klassen continued to be paid as an employee/inventor of Outland Design because he was a
11 Canadian citizen, and it was feared by Martin that a change in his employment status would
12 negatively impact his U.S. work visa.

13 9. Outland Canada was subsequently formed to market and license the Outland USA
14 technology. Outland Canada received a worldwide license from Outland USA to commercialize
15 the CvR™ technology. Outland Canada was to be located in Alberta, Canada and was to be
16 owned by the same shareholders, with the same ratios, as Outland USA. Accordingly, Outland
17 Design (i.e., Klassen and Martin) was issued 50% of the Outland Canada stock, and the
18 Canadian Holding Company was issued the remaining 50%.

19 10. Initially, Brian Webb was the president of Outland Canada. Webb was also the
20 chairman of the board of directors for Outland Canada. On April 20, 2000, Mr. Webb resigned
21 as president and was appointed chief operating officer. At that time, Martin was appointed
22 president and chief executive officer of Outland Canada. He was also president and chief
23 executive officer of Outland USA.

24 11. To fund the development and commercialization efforts of Outland USA, Martin
25 and Klassen recognized that they needed to continue to raise money. Martin and Klassen
brought in a new and dynamic Canadian management team (the "Canadian Management", which

1 initially consisted of Ken Bell and subsequently included Terry Knight and Garry Mihaichuk) to
2 Outland Canada, who began raising money through contacts with Canadian investors.

3 12. With the Canadian Management, new directors replaced the previous Canadian
4 directors and the ownership ratio of Outland Canada stock changed (with the issuance of
5 additional stock), so that Martin and Klassen, through Outland Design, now owned slightly less
6 than 50% of the outstanding stock of Outland Canada.

7 13. The Canadian Management recognized and relied upon the substantial value in
8 the inventions and technology owned or to be owned by Outland USA and Klassen's unique role
9 as a substantial beneficial stockholder and employee/inventor for Outland USA.

10 14. As it was anticipated that at some point in the future Outland Canada would go
11 public, it was decided that it was in the best interests of Outland Canada for Outland Canada to
12 own Outland USA. As such, Outland USA was purchased by Outland Canada, and in effect
13 provided approximately \$5 million US in funds to the founding shareholders (\$2.5 million to
14 Outland Design and \$2.5 million to the Canadian Holding Company). Martin remained the
15 chairman of the board of directors for both companies.

16 15. From April, 2000 through May, 2001, the Canadian Management raised more
17 than \$15 million for Outland Canada. These funds were deposited with Outland Canada and
18 then distributed directly to Outland USA by Outland Canada on an as-needed basis, with the
19 need determined by Martin and Klassen, and their Outland USA management, including plaintiff
20 and Counterclaim defendant Craig Forhan, who was the chief financial officer of Outland USA.

21 1. Klassen continued to be the driving inventive and technical force behind Outland
22 USA. Outland Canada continued to be the administrative, marketing and funding vehicle for
23 Outland USA. To avoid visa problems, Klassen continued to be paid through Outland Design
24 (which was co-located with Outland USA, first in Lynden, Washington, and later in Irvine,
25 California). Customarily, operating funds were transferred from Outland Canada into the
account of Outland USA to pay business expenses. For Klassen, funds were transferred from

1 Outland USA to Outland Design. Martin and Klassen did not disclose to the Canadian
2 Management that Klassen was not being paid as a regular employee of Outland USA.

3 16. Under the EcoTech Agreement, while being paid from the funds transferred from
4 Outland Canada to Outland Design, Klassen invented (a) improvements to the CvR™
5 Technology; and (b) a related hydraulic technology called the "D-2 Technology."

6 17. The Canadian Management was told about the improvements to the CvR™
7 Technology; however, initially Martin and Klassen deliberately concealed and kept hidden both
8 the D-2 Technology and the EcoTech Agreement from the Canadian Management.

9 18. The Canadian Management was not aware that the ownership of the D-2
10 Technology vested in Outland USA by operation of the EcoTech Agreement. Martin told the
11 Canadian Management that Klassen worked for Outland USA (and it was this employee
12 relationship that was believed to vest title to the D-2 Technology in Outland USA) and the
13 Canadian Management had no reason to believe otherwise. Martin created an organization chart
14 for Outland USA that showed that both he and Klassen were Outland USA employees.

15 19. When the D-2 Technology was finally disclosed to the Canadian Management by
16 Martin in late 2000, he denied (a) that the D-2 Technology was owned by Outland USA; and (b)
17 that the D-2 Technology was related to or competitive with the CvR™ Technology, or was
18 related to hydraulic technology. In fact, the D-2 Technology was and is owned by Outland USA
19 as provided for by the EcoTech Agreement, and by Klassen's relationship with Outland USA and
20 Outland Canada. Further, as Klassen confirmed, the D-2 Technology is hydraulic technology
21 and is competitive with the CvR™ Technology. Martin also failed to disclose that the D-2
22 Technology is competitive with the CvR™ Technology in any of the offering memoranda for
23 Outland Canada investors.

24 20. Instead, Martin claimed that the D-2 Technology was not owned by Outland
25 USA. Martin never disclosed the existence of the EcoTech Agreement to the Canadian
Management. Martin denied that Klassen was an employee of Outland USA, and ignored his

1 and Klassen's fiduciary relationship to Outland USA and Outland Canada. Martin maintained
2 that Outland USA had no right to the D-2 Technology. Martin deliberately misled the Canadian
3 Management into believing Outland Design (and he and Klassen) owned the D-2 Technology
4 and that if Outland USA and/or Outland Canada did not buy the D-2 Technology from Outland
5 Design (i.e., Klassen and Martin), that it would be sold elsewhere.

6 21. Martin and Klassen caused a provisional patent application for the D-2
7 Technology to be filed by the patent attorney for Outland USA at the U.S. Patent and Trademark
8 Office on February 8, 2001 in Klassen's name alone. This patent application was not disclosed
9 to the Canadian Management.

10 22. On January 24, 2001, Martin represented to the board of directors of Outland
11 Canada that the board needed to enter into a new agreement with Martin to acquire all present
12 and future inventions created by Klassen. Subsequently, Martin told the Canadian Management
13 that Klassen did not work for Outland USA (and claimed that Klassen was an employee/inventor
14 for Outland Design), and demanded that Outland Canada pay him and Klassen additional money
15 for the D-2 Technology or they would leave and take the D-2 Technology with them. It was at
16 this point that Martin tried to sell the D-2 Technology (which was already owned by Outland
17 USA) to Outland USA for approximately \$1.7 million.

18 23. Through his misrepresentations and concealment of the EcoTech Agreement,
19 Martin was able to induce the board of directors of Outland Canada to agree to employment
20 contracts between Outland USA and himself, Klassen and Forhan. Partial consideration for the
21 substantial compensation agreed to by the board of directors of Outland Canada was that Outland
22 USA would thereby be able to purchase Outland Design. The Canadian Management
23 misguidedly believed, through the actions and misrepresentations of Martin and Klassen, that
24 only through the acquisition of Outland Design, thus it becoming part of Outland USA, could
25 Outland USA thereby own the D-2 Technology.

1 24. In April 2001, an employment agreement was finally executed with Klassen. It
2 had an effective date in February 2001. The agreement to sell Outland Design to Outland USA
3 was a substantial part of the consideration for Klassen's compensation. In this manner, Outland
4 Canada believed that it would acquire all of the rights to the D-2 Technology either from Outland
5 Design or from Klassen individually.

6 25. Martin signed the employment agreement between Outland USA and Klassen on
7 behalf of Outland USA. He did not tell the Canadian Management that he and Klassen added a
8 rider to the employment agreement that allowed Klassen to retain any rights Klassen had in the
9 D-2 Technology; the rider stated that Klassen's transfer of the D-2 Technology was not part of
10 the employment agreement.

11 26. To date, Martin and Klassen have not transferred or sold Outland Design to
12 Outland USA.

13 27. Beginning in early 2001, the Canadian Management became increasingly
14 concerned about the past and ongoing conduct of Martin, Klassen, Forhan, Michael Lancaster
15 (vice president and general counsel for Outland USA) and others associated with them, as it
16 related to the interests of the shareholders of Outland Canada and the interests of Outland
17 Canada, the sole shareholder of Outland USA. These concerns were shared by more than 100
18 shareholders and special warrant holders of Outland Canada.

19 28. In late 2001, a former director of Outland Canada disclosed the EcoTech
20 Agreement to Canadian Management for the first time.

21 29. The Canadian Management thus discovered that Martin and Klassen, Outland
22 Design and Outland USA management, were offering for sale to Outland USA, technology (the
23 D-2 Technology) that Outland USA already owned--in order to fraudulently obtain additional
24 money for themselves from their Canadian investors.

25 30. Due to the aforementioned concerns and events, a meeting of the board of
directors of Outland Canada was duly noticed to be held, and was held, on November 22, 2001.

1 31. Martin and Forhan were served with notice of the board of directors meeting in
2 accordance with the bylaws of Outland Canada and participated by telephone.

3 32. During the November 22, 2001 meeting, a letter from the shareholders and special
4 warrant holders of Outland Canada was read word-for-word to Martin. Holders of special
5 warrants had paid market value for such securities and were entitled to automatically receive
6 common shares of Outland Canada by simply exercising their conversion rights, at no additional
7 cost to them. The letter provided, in relevant part, that the shareholders and special warrant
8 holders were extremely concerned and were dissatisfied with the present executive officers and
9 management of the company, particularly Martin. Martin was advised at that time that the letter
10 had been signed by more than one hundred common shareholders and special warrant holders,
11 who controlled what appeared to be a majority of the common shares of Outland Canada
12 (assuming the exercise of the special warrants into common shares by those special warrant
13 holders who had signed the letter). The board then resolved to take any and all necessary steps
14 to suspend management and operations of Outland Canada and Outland USA and to conduct a
15 review of current management and operations.

16 33. A new board was appointed for Outland USA, the new board consisting of the
17 members of the board for Outland Canada (the parent company): Martin, Forhan, Mihaichuk,
18 Bell and Knight (the "New Board").

19 34. Under the direction of the New Board, the operation of Outland USA was
20 suspended until an audit by independent third parties could be performed. To ensure the
21 integrity of the books and records, capital assets, and intellectual property, during the audit
22 period, security guards were posted and the locks were changed at the Outland USA Premises.

23 35. On February 13, 2002, a meeting of the shareholders of Outland Canada was held
24 and, of the 37,856,713 issued and outstanding shares of Outland Canada, holders of
25 approximately 35,765,948 shares representing approximately 94% were present in person or by
proxy, including all shares held by the plaintiffs. The aforementioned shares were voted in favor

1 of, among other things, the unanimous approval of a new board of directors of Outland Canada,
2 which included defendants Knight, Bell and Mihaichuk but excluded defendants Martin and
3 Forhan.

4 36. In addition to their improper actions related to the D-2 Technology ownership,
5 Martin and Klassen engaged in other activities that were harmful to, or not in the best interest of
6 Outland USA and/or Outland Canada.

7 37. Despite their obligations to Outland Canada and Outland USA, Martin and
8 Klassen engaged in acts or conduct that resulted in conflicts of interest and/or self-dealing,
9 including, but not limited to:

10 A. Martin and Klassen held interests in Outland USA's potential
11 manufacturing and distribution strategic partners, thereby tainting the decision-
12 making process with respect to engaging in relationships with such entities.
13 Martin set up these strategic relationships to divest Outland USA of its intellectual
14 property rights and move those rights to other entities not owned or controlled by
15 Outland Canada or Outland USA.

16 B. Martin and Klassen caused to be formed a trust (owned by them and their
17 Outland USA management)--the D2 Energy Systems Trust--with the expectation
18 that if Outland USA did not "buy" the D-2 Technology, it would be transferred to
19 the D2 Energy Systems Trust. In the event that Outland USA did "purchase" the
20 D-2 Technology, Martin and Klassen and their Outland USA management
21 intended to exclusively license the D-2 Technology to the D2 Energy Systems
22 Trust for a nominal royalty, thereby moving the economic benefit of the D-2
23 Technology from Outland USA to the D2 Energy Systems Trust. In either event,
24 the value of the D-2 Technology would be removed from Outland USA to the
25 benefit of Martin and Klassen.

1 C. Martin negotiated and approved contracts and transactions between
2 Outland USA and Outland Design. Martin and Klassen operated Outland Design
3 from the Outland USA facility without any division (or differentiation) between
4 the entities other than during the times that funds were transferred from Outland
5 USA's accounts to Outland Design's accounts for the payment of various items,
6 e.g., Outland USA issued a \$5,400 check to Outland Design for software that
7 Outland Design purchased for \$2,700, Outland USA transferred funds to pay
8 Klassen's compensation, and Outland USA paid more than \$150,000 to Outland
9 Design for undocumented services.
10

11 D. Confidential information about Outland USA's business partners was used
12 to buy stock in these companies.

13 38. In addition to engaging in conduct resulting in conflicts of interest or self-dealing,
14 Martin and Klassen also misappropriated Outland USA funds and property by engaging in the
15 acts or conduct set forth below:

16 A. As noted above, Martin and Klassen hid the invention of the D-2
17 Technology from Outland Canada and caused patent counsel for Outland USA to
18 file a provisional patent application for the D-2 Technology in Klassen's name,
19 rather than in Outland USA's name. Martin deceived Outland Canada and its
20 management about Outland USA's ownership of the D-2 Technology and claimed
21 the D-2 Technology belonged to Klassen and/or Outland Design. Martin and
22 Klassen then attempted to arrange a sale of the D-2 Technology from Outland
23 Design and/or Klassen to Outland USA.
24

25 B. In addition, on an ongoing basis, Outland Canada transferred funds to
Outland USA, which then transferred funds to Outland Design partially to pay

1 Klassen's compensation. Initially, Martin represented that this was done to be
2 consistent with Klassen's immigration filings. However, this transfer procedure
3 continued even after Klassen was deemed an employee of Outland USA.

4 C. Martin authorized Michael J. Lancaster, former attorney for Outland USA,
5 to receive \$800,000 from Outland USA and deposit it in Lancaster's separate
6 attorney trust account without the Outland USA board's approval, and in violation
7 of the board's suspension of the operations of the company.

8 D. Martin failed to implement (and/or failed to instruct his officers and
9 employees to implement and maintain) proper internal control procedures with
10 respect to the security of corporate assets. This resulted in, among other things,
11 company checks being written for large amounts of money without proper
12 documentation, unsecured signed blank checks, and confidential business
13 information in unlocked files..

14 E. Martin's wife was given Outland USA check signing authority even
15 though she was not an officer, director or employee of Outland USA.

16 F. Martin allowed the use of corporate funds for personal items.

17 G. Martin allowed the company to loan funds to an unrelated company.

18 H. Martin regularly co-mingled the funds of Outland Design and Outland
19 USA.

20 39. Martin and Klassen failed to act in the "best interests" of Outland USA and
21 Outland Canada by engaging in or permitting certain acts or conduct, including, but not limited
22 to:

23 A. Martin and Klassen kept Klassen on the books and records as an Outland
24 Design employee, although Martin represented that he and Klassen were Outland
25

1 USA employees. No inventorship agreement was executed between Klassen and
2 Outland Design or Outland USA with respect to intellectual property invented or
3 developed by Klassen. This was done to provide Klassen with the opportunity to
4 claim a proprietary interest in any intellectual property he generated. In fact, in
5 February 2001, Martin and Klassen caused the provisional patent application for
6 the D-2 Technology to be filed under Klassen's name, rather than Outland USA's
7 name.

8 B. Martin was uncooperative and instructed others to follow his lead. For
9 example, during Deloitte & Touche LLP's audit of the Outland USA business, he
10 would not cooperate and instructed others to not to cooperate, thereby delaying
11 Deloitte & Touche LLP's review and extending the period of time in which
12 Outland USA had to suspend its operations.

13 C. Martin failed to communicate with shareholders and other directors and
14 officers of Outland USA regarding the finances of Outland USA. Outland
15 Canada is informed and believes, and thereupon alleges, that Martin failed to
16 inform the shareholders and others about the current "burn rate," and about
17 questionable expenditures that Martin authorized, keeping them in the dark about
18 the level of cash that Outland USA had left to run its operations. For example,
19 Martin authorized a \$50,000 loan from Outland USA to Outland Sports, Inc., an
20 unrelated company in which Martin had an interest.

21 D. Weatherford Artificial Lift Systems, Inc. ("Weatherford") has a license
22 agreement with Outland Canada to utilize the CvR™ Technology for certain
23 applications in the oil and gas industry. Minimum royalty payments were due to
24 begin this year under that license agreement. Based on conversations with
25

1 Weatherford, Weatherford has informed Outland Canada that they do not intend
2 to advance those payments because the commercialization of the CvR™
3 Technology has been delayed. Outland Canada is of the view that this delay has
4 solely been caused by the actions of Martin and Klassen. Outland Canada will
5 thus suffer the economic loss of minimum payments as well as the economic loss
6 from the delay of commercialization.

7 40. As to all claims for relief, Outland Canada asserts that California law applies as
8 California is the state with the most significant contacts.

9 II. FIRST CLAIM FOR RELIEF

10 (Breach of Fiduciary Duty against Martin and Klassen)

11 41. Outland Canada incorporates by reference paragraphs 1 through 41 set forth
12 above.

13 42. As an officer and director, Martin worked at Outland USA in a position of trust
14 and confidence. Martin had a fiduciary duty to act in the best interests of Outland USA and its
15 sole shareholder, Outland Canada.

16 43. As an employee/inventor for Outland Design and Outland USA, Klassen worked
17 in a position of trust and confidence. He was and is a beneficial and substantial stockholder in
18 Outland USA, and a director and substantial stockholder in Outland Design. Klassen had a
19 fiduciary duty to act in the best interests of Outland USA and its sole shareholder, Outland
20 Canada.

21 44. Martin and Klassen breached their fiduciary duties by engaging in conduct that
22 resulted in conflicts of interest, self-dealing, and misappropriation of funds and property.

23 45. As a proximate result of Martin's and Klassen's breaches of their fiduciary duties,
24 Outland Canada has suffered damages in an amount to be determined at trial.
25

1 46. Further, in breaching their fiduciary duties as described above, Martin and
2 Klassen are guilty of malice and/or oppression thereby warranting an award of punitive damages
3 in an amount appropriate to punish him and deter others from engaging in similar misconduct.

4 **III. SECOND CLAIM FOR RELIEF**

5 (Violation of California Civil Code §§ 3426 et seq.
6 Misappropriation of Trade Secrets by Martin and Klassen)

7 47. Outland Canada incorporates by reference paragraphs 1 through 47 set forth
8 above.

9 48. Outland Canada, as sole shareholder of Outland USA, owns trade secrets
10 regarding and related to the D-2 Technology, the CvR™ Technology and other proprietary and
11 confidential information ("Outland USA Confidential Information").

12 49. Outland Canada and Outland USA made reasonable efforts to ensure that Outland
13 USA Confidential Information remained secrets by disclosing them only to those persons who
14 need to know, and who had agreed to keep the information a secret, and requiring those
15 individuals to promise not to disclose any information relating to Outland USA Confidential
16 Information. Martin and Klassen were individuals to whom Outland USA Confidential
17 Information was disclosed.

18 50. Outland USA Confidential Information falls within the retained definition of trade
19 secrets pursuant to Cal. Civil Code § 3426.1, including that it contains information that derives
20 economic value, actual or potential, from not being generally known, and not being readily
21 ascertainable by proper means by other persons.

22 51. Martin and Klassen misappropriated the above-described trade secrets and
23 Outland USA Confidential Information by disclosing this information to entities with which
24 Counterclaim defendants are affiliated and by attempting to use, and using it, for their own
25 purposes.

1 52. As a result of unlawful acts by Martin and Klassen, Outland Canada will suffer
2 great and irreparable harm and damage, the precise nature and amount of which will be difficult
3 to ascertain, thereby leaving Outland Canada without an adequate remedy at law.

4 53. Outland Canada is entitled to injunctive relief restraining Martin and Klassen, and
5 all persons acting in concert with them, from engaging in such further unlawful acts and from
6 reaping any additional commercial advantage from their misappropriation of Outland USA's
7 Confidential Information and trade secrets. Outland Canada is also entitled to an injunction
8 requiring Martin and Klassen to immediately turn over all trade secret information in their
9 possession. In addition, Outland Canada is entitled to an injunction ordering Martin and Klassen
10 to identify every person and entity that received any trade secret information from them.

11 54. Outland Canada is further entitled to recover from Martin and Klassen the
12 damages that Outland Canada has sustained as result of their wrongful acts. As a proximate
13 result of Martin's and Klassen's misappropriation of Outland USA's Confidential Information
14 and trade secrets, Outland Canada suffered damages and Martin and Klassen were unjustly
15 enriched. The amount of such damages cannot be determined at this time, but is in excess of the
16 jurisdictional amount.

17 55. Outland Canada is informed and believes and therefore alleges that the acts of
18 misappropriation of trade secrets by Martin and Klassen were willful and malicious. Therefore,
19 under California Civil Code § 3426.3, Outland Canada is entitled to recover exemplary damages
20 from Martin and Klassen in an amount sufficient to punish them and deter others from engaging
21 in similar conduct.

22 56. Outland Canada is informed and believes and therefore alleges that the acts of
23 misappropriation of trade secrets by Martin and Klassen were willful and malicious. Therefore,
24 under California Civil Code § 3426.4, Outland Canada is entitled to reasonable attorneys' fees
25 incurred in litigating this action.

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IV. THIRD CLAIM FOR RELIEF

(Misappropriation of Trade Secret - California Common Law - by Martin and Klassen)

57. Plaintiff incorporates herein and reallege, as if fully set forth in this paragraph, the allegations contained in Paragraph Nos. 1 through 57 above.

58. Outland Canada, as sole shareholder of Outland USA, owns trade secrets regarding and related to the D-2 Technology, the CvR™ Technology and other proprietary and confidential information.

59. Outland Canada and Outland USA made reasonable efforts to ensure that its trade secrets remained so by disclosing the secrets only to those persons who need to know, and who had agreed to keep the information a secret, and requiring those individuals to promise not to disclose any information relating to such trade secrets.

60. The CvR™ Technology, the D-2 Technology and the other proprietary and confidential information that Martin and Klassen have unlawfully acquired and retained constitute trade secrets and contain information that derives economic value, actual or potential, from not being generally known, and not being readily ascertainable by proper means by other persons.

61. Martin and Klassen misappropriated the above-described trade secrets related to the D-2 Technology by disclosing this information to entities with which Counterclaim defendants are affiliated.

62. As a proximate result of the misappropriation of the D-2 Technology trade secret, Outland Canada has suffered actual damages in an amount to be determined at trial. As a further proximate result of the misappropriation, Defendants were unjustly enriched in an amount to be determined at trial.

63. Outland Canada is informed and believes that the aforementioned acts of Martin and Klassen were willful and malicious, entitling Outland Canada to recover punitive damages pursuant to California Civil Code Section 3294.

1 **V. FOURTH CLAIM FOR RELIEF**

2 (Conversion against Martin, Klassen, and Outland Design)

3 64. Outland Canada incorporates by reference paragraphs 1 through 64 set forth
4 above.

5 65. Outland USA and its sole shareholder, Outland Canada, have equitable title, own
6 and are entitled to legal title of the D-2 Technology.

7 66. Martin and Klassen and/or Outland Design have claimed Klassen's and/or
8 Outland Design's ownership of the D-2 Technology and continue to wrongfully assert ownership
9 of the D-2 Technology. Outland Canada is informed and believes and therefore alleges that
10 Klassen has filed his own nonprovisional patent application for the D-2 Technology, claiming it
11 as his own. Klassen's prosecution of a separate patent application for the D-2 Technology will
12 cause substantial and irreparable harm to Outland Canada unless Klassen is immediately
13 enjoined from such prosecution.

14 67. Between the time of Martin's, Klassen's and/or Outland Design's conversion of the
15 D-2 Technology and the filing of this action, Outland Canada has been forced to expend time
16 and money in pursuit of its legal title to the D-2 Technology, all to Outland Canada's further
17 damage.

18 68. Martin's, Klassen's and/or Outland Design's actions were willful, wanton,
19 malicious and oppressive and justify an award of exemplary and punitive damages.

20 **VI. FIFTH CLAIM FOR RELIEF**

21 (Constructive Fraud against Martin, Klassen and Forhan)

22 69. Outland Canada incorporates by reference paragraph 1 through 69 set forth above.

23 70. By virtue of the relationship between Outland Canada (as sole shareholder of
24 Outland USA) and Martin, Klassen and Outland Design, these Counterclaim defendants owe
25 Outland Canada a fiduciary duty, and by virtue of Outland Canada having placed confidence in
the fidelity and integrity of Martin, Klassen, and Forhan to operate and by virtue of entrusting

1 Martin and Klassen with authority to operate the Outland USA business in the best interests and
2 for the benefit of Outland Canada and Outland USA, a confidential relationship existed at all
3 times mentioned between Outland Canada and Counterclaim defendants.

4 71. Martin, Klassen and Forhan accepted the trust and confidence placed in them with
5 the intent to deceive and defraud Outland Canada and its investors. Martin, Klassen and Forhan
6 did this with the intent to induce reliance by Outland Canada in the continuing fidelity of Martin,
7 Klassen and Forhan who were entrusted with acting in the best interests of Outland USA.

8 72. Despite having voluntarily accepted the trust and confidence reposed in them,
9 Martin, Klassen and Forhan abused the trust and confidence of Outland Canada by disbursing
10 funds and transferring property owned by Outland and Outland USA to themselves and others
11 for non-business-related purposes, and by conducting business at Outland USA's facilities for
12 their own benefit or the benefit of other companies controlled by or of interest to them.

13 73. Martin and Klassen abused the trust and confidence of Outland Canada and its
14 investors through their concealment of the invention of the D-2 Technology from Outland
15 Canada, and their refusal to transfer legal title, although Outland USA holds equitable title with
16 Klassen as the holder of legal title in trust for Outland USA. Further, Martin and Klassen
17 permitted Klassen or others to wrongfully claim ownership of the D-2 Technology.

18 74. Martin and Klassen further kept Klassen on the books and records as an Outland
19 Design employee--even though Klassen was compensated with funds from Outland Canada and
20 Outland USA--and no inventorship agreement was executed between Klassen and Outland USA
21 with respect to intellectual property invented or developed by Klassen, so that Klassen, under
22 Martin's direction, could fraudulently claim a proprietary interest in technology he invented
23 while working for Outland USA as an employee/inventor. And, when an agreement regarding an
24 employment agreement was finally reached, Martin and Klassen removed the consideration for
25 the agreement--the transfer of the D-2 Technology.

1 75. Outland Canada reasonably relied on Martin, Klassen and Forhan in light of their
2 own representations of fidelity and their acceptance of their positions of trust and confidence.
3 Outland Canada learned its confidence in reliance upon Martin, Klassen and Forhan was
4 misplaced when Outland Canada discovered that Martin, Klassen and Forhan disbursed funds
5 and fraudulently claimed property belonging to Outland Canada and Outland USA to the
6 personal benefit of themselves or others.

7 76. As a result of the fraud of Martin, Klassen and Forhan as herein alleged, Outland
8 Canada has been damaged in an amount to be determined at trial.

9 77. In committing the fraud described above, Martin, Klassen and Forhan are guilty
10 of malice, fraud, and/or oppression thereby warranting an award of punitive damages in an
11 amount appropriate to punish Martin, Klassen and Forhan, and deter others from engaging in
12 similar misconduct.

13 VII. SIXTH CLAIM FOR RELIEF

14 (Fraud against Martin and Klassen)

15 78. Outland Canada incorporates by reference paragraphs 1 through 78 set forth
16 above.

17 79. Martin and Klassen have claimed that the D-2 Technology belongs to Klassen
18 and/or Outland Design. Further, Martin and Klassen attempted to arrange a sale of the D-2
19 Technology from Outland Design and/or Klassen to Outland USA. In fact, three employment
20 agreements were executed with consideration being the sale of Outland Design and the transfer
21 of the D-2 Technology to Outland Canada and Outland USA.

22 80. By representing that Klassen and/or Outland Design owned the D-2 Technology,
23 Martin and Klassen acted with the intent to induce reliance by Outland Canada to fund and
24 approve Outland USA's entering into employment agreements with Martin, Klassen, and Forhan.
25 Further, Martin approved the carve-out of the D-2 Technology transfer to Outland USA in the
proposed employment agreement with Klassen.

1 81. Martin and Klassen undertook these actions with the intent to deceive and defraud
2 Outland Canada.

3 82. Outland Canada reasonably relied upon Martin's and Klassen's representation by
4 agreeing to enter into employment agreements with Martin, Klassen and Forhan in exchange for
5 the sale of Outland Design (and the D2 Technology). Outland has since discovered the true
6 facts--that Outland Canada and Outland USA already owned the D-2 Technology.

7 83. As a result of the fraud of Martin and Klassen, Outland Canada has been damaged
8 in an amount to be determined at trial.

9 84. In committing the fraud described above, Martin and Klassen are guilty of malice,
10 fraud, and/or oppression thereby warranting an award of punitive damages in an amount
11 appropriate to punish Martin and Klassen, and deter others from engaging in similar misconduct.

12 **VIII. SEVENTH CLAIM FOR RELIEF**

13 (Violation of California Labor Code §§ 2860 & 2863 By Martin, Klassen and Forhan)

14 85. Outland Canada incorporates by reference paragraphs 1 through 85 set forth
15 above.

16 86. The conduct of Martin, Klassen and Forhan violates California Labor Code
17 § 2860, which provides that everything an employee acquires by virtue of his employment,
18 except the compensation due to him by his employer, belongs to the employer. In addition, the
19 conduct of Martin, Klassen and Forhan violates California Labor Code § 2863, which provides
20 that an employee who has any business to transact on his own account, similar to that entrusted
21 to him by his employer, shall always give the preference to the business of the employer.

22 87. As a direct and proximate result of Martin's, Klassen's and Forhan's conduct,
23 Martin, Klassen and Forhan received and continue to hold work product and information
24 belonging to Outland Canada and Outland USA, as well as monetary gain as a result of their
25 failure to act in the best interests of Outland Canada and Outland USA.

1 88. In committing the acts described above, Martin, Klassen and Forhan are guilty of
2 malice, fraud, and/or oppression thereby warranting an award of punitive damages in an amount
3 appropriate to punish Martin, Klassen and Forhan, and deter others from engaging in similar
4 misconduct.

5 **IX. EIGHTH CLAIM FOR RELIEF**

6 (Unfair Competition By Martin, Klassen, and Forhan – Cal. Bus. & Prof. Code §17200)

7 89. Outland Canada incorporates by reference paragraphs 1 through 89 set forth
8 above.

9 90. Martin, Klassen and Forhan misappropriated trade secrets, money, labor and
10 opportunities away from Outland Canada and Outland USA and to themselves and others.

11 91. These acts violate California Labor Code §§ 2860 and 2863, and therefore,
12 constitute unlawful business acts or practices within the meaning of California Business and
13 Professions Code § 17200.

14 92. As a direct and proximate result of the aforementioned acts, Martin, Klassen and
15 Forhan received and continue to hold work product and information belonging to Outland
16 Canada and Outland USA, as well as monetary gain as a result of their unlawful acts and
17 business practices.

18 93. Outland Canada has taken upon itself enforcement of the claim alleged herein.
19 There is a financial burden incurred in pursuing this claim, and it would be against the interests
20 of justice to penalize Outland Canada by forcing it to pay attorneys' fees from the recovery on
21 this claim. Therefore, an award of attorneys' fees is appropriate pursuant to California Code of
22 Civil Procedure § 1021.5.

23 **X. NINTH CLAIM FOR RELIEF**

24 (Declaratory Relief against Martin and Klassen)

25 94. Outland Canada incorporates by reference paragraphs 1 through 94 set forth
above.

1 95. An actual controversy has now arisen and exists between Outland Canada and
2 Martin and Klassen concerning their respective rights, title, and interests in and to the D-2
3 Technology.

4 96. Outland USA owns equitable title to the D-2 Technology and Outland USA is
5 entitled to an assignment of legal title by Klassen. A judicial determination is necessary and
6 appropriate at this time in order that Outland Canada may confirm its ownership rights with
7 respect to the D-2 Technology.

8 **XI. TENTH CLAIM FOR RELIEF**

9 (Declaratory Relief against Martin, Klassen and Forhan)

10 97. Outland Canada incorporates by reference paragraphs 1 through 97 set forth
11 above.

12 98. An actual controversy has now arisen and exists between Outland Canada and
13 Martin, Klassen and Forhan concerning the existence of enforceable employment agreements
14 between Martin, Klassen and Forhan and Outland Canada and Outland USA. Outland Canada
15 contends that no enforceable employment agreement exists with respect to any of the
16 Counterclaim defendants with Outland USA because there was a failure of consideration for any
17 alleged agreement--specifically, no sale of Outland Design to Outland USA took place, which
18 was part of the consideration for any purported employment agreement with Martin, Klassen and
19 Forhan. Furthermore, the employment agreements were fraudulently induced by Martin,
20 Klassen, and Forhan by representing that Klassen and/or Outland Design owned the D-2
21 Technology when, in fact, Outland USA owned the technology.

22 99. Outland Canada desires a judicial determination and a declaration that enforceable
23 employment agreements do not exist between Martin, Klassen and Forhan and Outland Canada
24 and Outland USA.

1 100. A judicial determination is necessary and appropriate at this time in order that
2 Outland Canada may ascertain its rights and obligations with respect to the purported
3 employment agreements with Counterclaim defendants.

4 **REQUEST FOR RELIEF**

5 Counterclaimant, Outland Canada, requests that judgment entered in its favor and against
6 Counterclaim defendants Martin, Klassen, Forhan and Outland Design as follows:

7 **A. First Claim For Relief**

- 8 1. For compensatory damages in an amount to be determined at trial;
9 2. For punitive damages in an amount appropriate to punish the liable parties and
10 punish others from engaging in similar conduct;

11 **B. Second Claim For Relief**

- 12 1. For injunctive relief restraining Martin and Klassen, and all persons acting in
13 concert with them, from engaging in such further unlawful acts and from reaping
14 any additional commercial advantage from their misappropriation of Outland
15 Canada's trade secrets;
16 2. For injunctive relief requiring Martin and Klassen to immediately turn over all
17 trade secret information in their possession;
18 3. For injunctive relief ordering Martin and Klassen to identify every person and
19 entity that received any trade secret information from them;
20 4. For compensatory damages in an amount to be determined at trial;
21 5. For disgorgement of sums by which Counter defendants have been unjustly
22 enriched;
23 6. Alternatively, for a reasonable royalty or licensing fees;
24 7. For exemplary damages in an amount appropriate to punish the liable parties and
25 to deter others from engaging in similar conduct;

For reasonable attorney's fees incurred in litigating this action;

1 **C. Third Claim For Relief**

- 2 1. For compensatory damages in an amount to be determined at trial;
- 3 2. For disgorgement of sums by which Counterclaim defendants have been unjustly
- 4 enriched;
- 5 3. For punitive damages in an amount appropriate to punish the liable parties and to
- 6 deter others from engaging in similar conduct;

7 **D. Fourth Claim For Relief**

- 8 1. For damages in the form of value of the property converted;
- 9 2. For damages for the time and money reasonably expended in pursuit of the
- 10 converted property;
- 11 3. For punitive damages in an amount appropriate to punish the liable parties and to
- 12 deter others from engaging in similar conduct;

13 **E. Fifth Claim For Relief**

- 14 1. For compensatory damages in an amount to be determined at trial;
- 15 2. For punitive damages in an amount appropriate to punish the liable parties and
- 16 punish others from engaging in similar conduct;

17 **F. Sixth Claim For Relief**

- 18 1. For compensatory damages in an amount to be determined at trial;
- 19 2. For punitive damages in an amount appropriate to punish the liable party and
- 20 punish others from engaging in similar conduct;

21 **G. Seventh Claim For Relief**

- 22 1. For compensatory damages in an amount to be determined at trial;
- 23 2. For punitive damages in an amount appropriate to punish the liable party and
- 24 deter others from engaging in similar conduct.
- 25

1 **H. Eighth Claim For Relief**

- 2 1. For an order directing restitution in the form of disgorgement of any benefits
3 obtained as a result of Counter defendants' unlawful acts or business practices;
4 2. For an award of attorneys' fees incurred in litigating this action.

5 **I. Ninth Claim For Relief**

- 6 1. For an order from this Court declaring that Outland USA, a wholly owned
7 subsidiary of Outland Canada, holds all right, title and interest both equitable and
8 legal, in the D-2 Technology;
9 2. Alternatively, for an order from this Court creating a constructive trust for D-2
10 Technology, and requiring Klassen to immediately execute an assignment of the
11 D-2 Technology in favor of Outland USA.

12 **J. Tenth Claim For Relief**

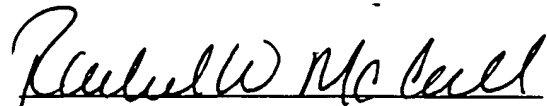
- 13 1. For an order from this Court declaring that no enforceable employment
14 agreements exist between Counter defendants and Outland Canada and Outland
15 USA;

16 **K. All Claims For Relief**

- 17 1. For attorneys' fees incurred in litigating this action;
18 2. For costs of suit incurred;
19 3. For interest on all damages at the legal rate; and
20 4. For such other and further relief as the Court deems just and proper.
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1 DATED this 11th day of April, 2002.

2 DORSEY & WHITNEY LLP

3
4 

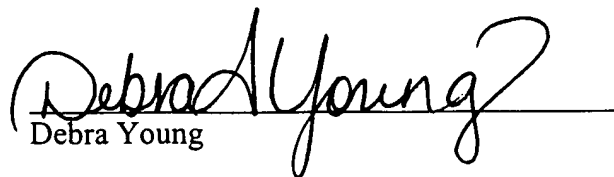
5 Randall R. Steichen, WSBA # 19264
6 Rachel W. McCall, WSBA #26777
7 Attorneys for Defendants and
8 Counterclaimants Outland
Technologies, Inc., Terry Knight, Ken
Bell, and Garry Mihaichuk

9 CERTIFICATE OF SERVICE

10 I HEREBY CERTIFY that a true and correct copy of the foregoing DEFENDANTS'
11 ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS has been furnished by
12 Facsimile and Federal Express to:

13
14 Douglas R. Shepherd
15 Shepherd And Abbott
16 222 Grand Avenue, Suite B
Bellingham, WA 98225

17 this 11th day of April, 2002.

18
19 
20 Debra Young

21
22
23 RECEIVED

24 JUL 2 4 2002

25 OFFICE OF PETITIONS

RECEIVED

JUL 24 2002

OFFICE OF PETITIONS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

OUTLAND DESIGN TECHNOLOGIES, INC., a Washington corporation; UNICK INVESTMENTS, LLC, a Washington limited liability company; TERRY MARTIN, an individual, and as a director of Outland Technologies (USA), Inc.; JAMES IRELAND, as a director of Outland Technologies (USA), Inc.; CRAIG FORHAN, an individual, and as a director of Outland Technologies (USA), Inc.; STEVE FRYER, as a director of Outland Technologies (USA), Inc.; and JAMES KLASSEN, an individual,

Plaintiffs,

vs.

OUTLAND TECHNOLOGIES (USA), INC., a Washington corporation; OUTLAND TECHNOLOGIES (CANADA), INC., an Alberta, Canada corporation; TERRY KNIGHT; KEN BELL; GARRY MIHAICHUK; and DOE 1 through DOE 50, inclusive,

Defendants.

Case No: CV02-0229Z

**AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT,
BREACH OF FIDUCIARY DUTY,
TORTIOUS INTERFERENCE WITH
CONTRACT, BREACH OF
EMPLOYMENT CONTRACTS,
FAILURE TO PAY WAGES,
CONVERSION, REPLEVIN AND
APPOINTMENT OF RECEIVER**

COPY

1 COME NOW plaintiffs, except plaintiff James Klassen, and for cause of
2 action against the above named defendants allege as follows:

3 **I. PARTIES**

4 01. Plaintiff Outland Design Technologies, Inc. ("ODTI") is a corporation
5 organized and existing under the laws of Washington, which has qualified to do
6 business in California, and was doing business in California at its principal place
7 of business located at 19200 Von Karman Avenue, Suite 600, Irvine, Orange
8 County, California. ODTI is presently doing business in Whatcom County,
9 Washington.

10 02. Plaintiff Unick Investments, LLC, ("Unick") is a limited liability
11 company organized and existing under the laws of Washington and is doing
12 business in Whatcom County, Washington.

13 03. Plaintiff Terry Martin ("Martin") is an individual residing in Whatcom
14 County, Washington and is a duly elected member of, and chairman of, the
15 Board of Directors of Outland USA and Outland Canada and the duly elected and
16 acting president and chief executive officer of Outland USA and Outland Canada.
17 Martin has purportedly been removed as an officer and director of said
18 corporations. One of the purposes of this action is for a judicial determination of
19 the status of Outland USA's officers and board. Martin also has an employment
20 agreement with defendants Outland USA and Outland Canada.

21 04. Plaintiff James Ireland ("Ireland") is an individual residing in Orange
22 County, California and is a duly elected member of the Board of Directors of
23 Outland USA. Ireland has purportedly been removed as a board member and
24 one of the purposes of this action is to determine his corporate status.

25 05. Plaintiff Craig Forhan ("Forhan") is an individual residing in Whatcom
26 County, Washington and is a duly elected member of the Board of Directors of
27 Outland USA and Outland Canada and the duly elected acting chief financial
28 officer of Outland USA and Outland Canada. Forhan has purportedly been
29 removed as an officer and director of said corporations and one of the purposes
30 of this action is for a judicial determination of the status of Outland USA's officers

1 and board. Forhan also has an employment agreement with defendants Outland
2 USA and Outland Canada.

3 06. Plaintiff Steve Fryer ("Fryer") is an individual residing in Orange
4 County, California and is a duly elected member of the Board of Directors of
5 Outland USA. Fryer has purportedly been removed as a board member and one
6 of the purposes of this action is to determine his corporate status.

7 07. Plaintiff James Klassen ("Klassen") is an individual residing in
8 Whatcom County, Washington.

9 08. Defendant Outland Technologies (USA), Inc. ("Outland USA") is a
10 corporation organized and existing under the laws of Washington which has
11 qualified to do business in California, and was doing business in California at its
12 principal place of business located at 17032 Murphy Avenue, Irvine, Orange
13 County, California. Outland USA also transacted business in Whatcom County,
14 Washington. At one time, and perhaps now 50% of Outland USA, was owned
15 by plaintiff ODTI. The present ownership of Outland USA is not known to
16 plaintiffs.

17 09. Defendant Outland Technologies, Inc. ("Outland Canada") is a
18 corporation organized and existing under the laws of Alberta, Canada doing
19 business in Alberta, Canada, which did business in Orange County, California and
20 claims to be the sole shareholder of Outland USA. Plaintiffs ODTI, Unick, and
21 Forhan own more than 50% of defendant Outland Canada.

22 10. Defendant Terry Knight ("Knight") is an individual and a member of
23 the Board Of Directors of Outland Canada and a senior vice-president for
24 corporate compliance and securities of Outland Canada and claims to be a
25 director and perhaps officer of Outland USA.

26 11. Defendant Ken Bell ("Bell") is an individual and a member of the
27 Board of Directors of Outland Canada and a vice-president for investor relations
28 of Outland Canada and claims to be a director and perhaps officer of Outland
29 USA.
30

12. Defendant Garry Mihaichuk (“Mihaichuk”) is an individual and a member of the Board of Directors of Outland Canada and claims to be a director of Outland USA.

13. The true names, identities, and capacities of defendants John Does are unknown to plaintiffs and therefore, plaintiffs, except plaintiff Klassen, sue said defendants by such fictitious names and when their names, identities, and capacities are known to plaintiffs this amended complaint will be amended to show their true name, identity, and capacity.

14. Plaintiffs are informed and believe and thereon allege that at all times mentioned herein, all defendants were acting in concert and each defendant was the agent of each remaining defendant and was acting within the scope and purpose of such agency. References to "defendants" shall refer to all defendants except defendant Outland USA. When defendant Outland USA is intended to be included its name will be used.

II. JURISDICTION

15. Plaintiffs Martin and Forhan are U.S. citizens and residents of Washington State. **Plaintiff Klassen is a Canadian Citizen but is a resident of Whatcom County, Washington.** Plaintiffs Ireland and Fryer are U.S. citizens and residents of California. Plaintiffs ODTI and Unick are a Washington corporation and a Washington limited liability company respectively. The citizenship of defendants Knight, Bell and Mihaichuk is Canadian and said defendants reside in Alberta, Canada. Defendant Outland USA is a Washington corporation. Defendant Outland Canada is an Alberta, Canada corporation. Damages alleged by plaintiffs include more than \$500,000.00 due plaintiffs Martin and Forhan as severance pay due under written employment agreements with defendant Outland USA and Outland Canada after the wrongful termination of said plaintiffs' employment by defendants. Plaintiffs' and defendants' allege ownership and misappropriation by the other party of technology purportedly worth millions of dollars.

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III. FACTS

16. Outland USA is in the business of developing, designing, and licensing technology utilizing patented CvR TM technology (rotary positive displacement) in the power generation industry, oil and gas, and other industrial applications (pumps, compressors, fluid transfer, etc.)

17. Outland Canada purports that Outland USA is a wholly owned subsidiary of Outland Canada. However, no stock has apparently ever been issued by Outland USA to Outland Canada; therefore any purported action by Outland Canada taken as a shareholder of Outland USA is void.

18. Unick Investments, Forhan, and ODTI owned more than 50% of the voting shares of Outland Canada prior to what defendants allege was a conversion of certain warrants or preferred stock held by others. Plaintiffs believe and therefore allege that during the period November 22, 2001 through November 24, 2001, and for some period of time thereafter, Unick and ODTI owned a majority of the voting shares of Outland Canada. Defendants Knight and Bell are minority shareholders in Outland Canada while Mihaichuk was neither an officer nor shareholder in Outland Canada. Plaintiff Forhan controls plaintiff Unick Investments. **Plaintiffs Martin and Klassen own 60% of and control plaintiff ODTI.**

19. Plaintiffs are informed and believe and thereon allege that the members of the Board of Directors of Outland Canada at the time of the incidents complained of, i.e. November 22, 2001 through November 30, 2001, were the three defendants, Knight, Bell and Mihaichuk, and the two plaintiffs, Martin and Forhan.

20. The members of the Board of Directors of Outland USA during the period November 22, 2001 through the present include four of the individual plaintiffs, Martin, Ireland, Forhan, and Fryer.

21. On November 19, 2001, plaintiffs Martin and Forhan received by fax notice from defendant Mihaichuk that there would be a meeting of the Board of Directors of Outland Canada at 9:00 a.m. in Calgary, Alberta Canada on

1 Thursday, November 22, 2001, a national holiday (Thanksgiving) in the United
2 States. The notice indicated that the board would discuss "[C]larification of
3 issues relating to the technology known as the D-2 Technology" and
4 "[S]hareholder Issues." The notice was misleading and deceptive in that it did
5 not give notice of the issues actually discussed at the meeting.

6 22. Because of the short notice of the meeting, and because of their
7 involvement in family functions on the Thanksgiving weekend, plaintiffs Martin
8 and Forhan were not able to arrange transportation and to attend the meeting
9 noticed for November 22, 2001. Martin and Forhan did participate in the
10 Directors of Outland Canada meeting by telephone, which was authorized by
11 Outland Canada's by-laws.

12 23. There was no notice given of a meeting of the members of the Board
13 of Directors of Outland USA to be held on November 22, 2001 or at any time
14 thereafter to any plaintiff.

15 24. On November 22, 2001, and apparently at a meeting held contrary to
16 and in violation of Washington law, defendants Knight, Bell and Mihaichuk,
17 purportedly acting as members of the Board of Directors of Outland USA,
18 resolved that "Operations and Management of Outland Technologies (USA), Inc.
19 be suspended from the close of this meeting"

20 25. The purported resolution is legally insufficient for reasons including,
21 but not limited to:

22 25.1 Defendants Knight, Bell and Mihaichuk were not, at the
23 time the purported resolution was made, members of the Board of Directors of
24 Outland USA.

25 25.2 No notice of any meeting of the Board of Directors of
26 Outland USA to be held on November 22, 2001, was given by anyone to plaintiffs
27 Martin, Ireland, Forhan, and Fryer, the duly elected and acting members of the
28 Board of Directors of Outland USA on November 22, 2001.

29 25.3 Nothing in the bylaws or other governing documents of Outland
30 USA or the law of the state of Washington authorizes the Board of Directors to

1 act as a board without a board meeting without unanimous approval of the
2 board members.

3 26. On or about November 24, 2001, while the officers and directors of
4 Outland USA were on Thanksgiving holiday, defendants, without notice to
5 plaintiffs, physically and wrongfully took possession of the premises leased by
6 Outland USA located at 17032 Murphy Avenue, Irvine, California; changed the
7 locks on the premises; posted armed guards at the premises; and prevented
8 plaintiffs from accessing the premises. This action effectively shut down the
9 business of Outland USA without cause and without legal right. Outland USA
10 was responsible for 90% of the entire business of Outland Canada and Outland
11 USA.

12 27. On November 26, 2001, defendants sent a notice dated November
13 24, 2001, on Outland Canada letterhead, to plaintiffs and others indicating that
14 defendants, had "suspended" the operations of Outland USA and that the
15 "Board" (without designating whether it was the Board of Directors of Outland
16 USA or Outland Canada) would be conducting a review of all company
17 operations.

18 28. Defendants, from and after November 26, 2001, have denied
19 plaintiffs access to their offices at the principal place of business of Outland USA,
20 including access to their personal property and documentary evidence necessary
21 for the conduct of the business of Outland USA and the prosecution of this
22 lawsuit.

23 29. Defendants attempted to freeze the Whatcom County, Washington
24 bank accounts, of Outland USA without notice and then to change the authorized
25 signatories on the accounts from plaintiffs to defendants.

26 30. Plaintiffs are informed and believe and therefore allege that during
27 the "takeover" of the Outland USA premises, defendants, without consent of
28 plaintiffs, seized personal property owned by plaintiffs, including corporate
29 records of ODTI and Unick, confidential, proprietary information owned by
30 Martin, Forhan, and Klassen, and personal effects of plaintiffs, as well as rifled

1 through plaintiffs' personal and company files, both computer and other, and
2 either took or deleted files, all without the consent of plaintiffs. Prior to the
3 unlawful "takeover" of Outland USA by defendants, plaintiffs owned valuable
4 assets, including contract rights worth at least several hundred thousand dollars.

5 31. Defendants have refused to return all the plaintiff's personal property
6 described in paragraph 30 above. Defendants have refused to even disclose the
7 location of much of said personal property and, as to some of such property,
8 wrongfully claimed the property belonging to defendants.

9 32. On or about February 1, 2001, plaintiffs Martin and Forhan entered
10 into written Employment Agreements with Outland USA and Outland Canada that
11 obligated said defendant to pay certain severance benefits to them upon
12 termination of their employment.

13 33. As part of the defendants' "shut down" of Outland USA, plaintiffs
14 Martin's and Forhan's employment by Outland USA was terminated under
15 conditions entitling said plaintiffs to severance pay benefits.

16 34. Defendants have refused to pay plaintiffs Martin and Forhan any of
17 the severance pay benefits they are entitled to.

18 35. Defendants are withholding personal property that belongs to
19 plaintiffs as described above. Defendants wrongfully and unlawfully seized the
20 corporate premises of Outland USA and "shut down" that company's business
21 operations, making it probable that the assets of said corporation and the
22 personal property belonging to plaintiffs which was on the business premises of
23 said corporation are in danger of being lost, removed or materially injured.

24 36. It is disputed between the parties as to who are the lawful directors
25 and officers of Outland USA, and thus, who lawfully controls Outland USA. It is
26 not disputed that defendants "shut down" Outland USA. Plaintiffs believe and
27 therefore allege that Outland USA is in the process of dissolution or is insolvent
28 or is in imminent danger of insolvency.
29
30

1 37. Based upon the facts alleged herein and in the Amended
2 Counterclaims filed by defendants, to secure ample justice to the parties, it is
3 appropriate for the Court to appoint a receiver, pursuant to the laws of
4 California, to take charge of the assets of Outland USA, as well as personal
5 property which belonged to plaintiffs on the business premises of Outland USA at
6 the time defendants excluded the individual plaintiffs from the business premises
7 of Outland USA and to manage and dispose of said assets as the Court
8 directs.

9 38. Plaintiffs incorporate the allegations of paragraphs 1 through 36 in all
10 causes of actions listed herein below.

11 **IV. CAUSES OF ACTION**

12 **1. DECLARATORY JUDGMENT RCW 7.24.**

13 39. An actual controversy has arisen and now exists between plaintiffs
14 and defendants concerning their respective contractual and statutory rights and
15 duties, in that plaintiffs contend that the actions taken by defendants in the
16 name of Outland Canada and/or Outland USA have been without proper
17 corporate authority, without legal authority, deceptive, fraudulent, and
18 oppressive, and have endangered the best interests of Outland USA and Outland
19 Canada.

20 40. Plaintiffs are informed and believe and therefore allege that
21 defendants contend that their actions have been proper and taken with proper
22 legal and corporate authority.

23 41. Plaintiffs desire a judicial determination of their rights and duties and
24 a declaration as to whether the action taken by defendants Terry Knight, Ken
25 Bell and Gary Mihaichuk, purporting to act as the Board of Directors of Outland
26 USA and Outland Canada, purporting to act as the sole shareholder of Outland
27 USA, in closing the operations of Outland USA, seizing control of its premises,
28 excluding its officers, employees, and plaintiff board members from said
29 premises, and attempting to seize its bank account(s) in Whatcom County,
30 Washington, was void or otherwise unlawful.

1 42. Plaintiffs desire a judicial declaration as to who properly constituted
2 the board of directors and proper officers of Outland USA on and before
3 December 11, 2001, and who presently constitutes the members of the board of
4 directors and proper officers of Outland USA.

5 43. Plaintiffs desire a judicial declaration as to which, if any, corporate
6 actions taken by any defendant on behalf of defendant Outland USA, since
7 November 19, 2001, was a lawful action of Outland USA.

8 44. For such other and further judicial declarations regarding the
9 ownership and management of Outland USA, at such times as is necessary and
10 appropriate under the circumstances, so plaintiffs may ascertain their rights and
11 duties.

12 **2. APPOINTMENT OF RECEIVER:**

13 45. Outland USA is in imminent danger of insolvency and has issues
14 regarding who is entitled to control and manage the corporation. A receiver is
15 necessary to secure ample justice to the parties to this action.

16 46. Outland USA is indebted in large sums money, \$500,000 and more, to
17 plaintiffs Forhan and Martin under the terms and conditions of employment
18 contracts. If a receiver is not appointed to take charge of the assets of Outland
19 USA, it will likely be disastrous to the business of Outland USA and to its
20 creditors and stockholders.

21 47. At various times prior to the preparation of this Amended Complaint,
22 plaintiffs have demanded of defendants that they take prompt action to improve
23 the financial situation of Outland USA. As regards the control and management
24 of Outland USA during this litigation, plaintiffs have no adequate remedy at law.

25 48. Plaintiffs seek the judicial appointment of a receiver to take charge of
26 the books, records, property, and assets of every kind of Outland USA to
27 continue the business of Outland USA pursuant to orders of this court during this
28 litigation.

29 **3. BREACH OF FIDUCIARY DUTY:**

30 49. At all times herein defendants Outland Canada, Knight, Bell, and

1 Mihaichuk claimed to be operating as directors and/or officers of defendants
2 Outland Canada or Outland USA.

3 50. As directors and officers they owed a fiduciary duty to the
4 shareholders of Outland Canada, Outland USA, and to plaintiffs. This fiduciary
5 duty includes the duties of loyalty, trust, fair dealing, and good faith.

6 51. The activities of said defendants as described herein were a breach of
7 their fiduciary duty to plaintiffs. This breach of fiduciary duty is continuing and
8 plaintiffs have been damaged thereby in an amount to be proven at trial and
9 which amount is likely as follows:

10 51.1 As to Plaintiff Martin: More than \$454,000

11 51.2 As to Plaintiff Forhan: More than \$300,000

12 51.3 As to Plaintiff ODTI: More than \$5,580,000 and the damages may
13 reach \$25,000,000

14 51.4 As to Plaintiff Unick: More than \$1,800,000

15 **4. TORTIOUS INTERFERENCE WITH CONTRACTS:**

16 52. The other defendants were aware of defendant Outland USA's license
17 agreement with RLC Christianson. The individual defendants for their own
18 benefit, and not for the benefit of Outland USA or plaintiffs, interfered in that
19 relationship in a manner that has damaged Outland USA and plaintiffs. This
20 interference has damaged Outland USA in a sum expected to exceed \$3,000,000
21 annually and therefore in an amount that ultimately damages the shareholders of
22 Outland USA, including plaintiff shareholders. This claim is brought by plaintiffs
23 as a shareholder's derivative action. Under Washington common law and statute
24 plaintiffs are entitled to their reasonable attorney's fees, costs, and expenses
25 incurred herein.

26 53. The individual defendants were aware of plaintiffs Martin and
27 Forhan's employment agreements with Outland USA and Outland Canada and
28 have wrongfully interfered with the employment contracts as set forth herein.
29 Plaintiffs Forhan and Martin have suffered the destruction of their employment
30 relationship to their damage as follows:

1 53.1. Martin has suffered damages expected to exceed \$454,993.50, plus
2 interest, attorneys fees, and punitive damages. A copy of the contract is
3 attached hereto as Exhibit 1.

4 53.2 Forhan has suffered damages expected to exceed \$225,000, plus
5 interest, attorneys' fees, and punitive damages. A copy of a draft of the contract
6 is attached hereto as Exhibit 2. The original executed contract was taken by
7 defendants on or about November 22, 2001.

8 **5. BREACH OF EMPLOYEMENT CONTRACTS:**

9 54. On or about February 1, 2001, Martin, for good and valuable
10 consideration, entered into an employment agreement with defendants Outland
11 Canada and Outland USA. On or about December 18, 2001, defendants Outland
12 Canada and Outland USA, without good cause and without good reason, fired or
13 terminated Martin.

14 55. By agreement, defendants Outland USA and Outland Canada owe to
15 Martin more than \$454,000.00, plus withheld medical benefits, attorneys' fees,
16 and punitive damages. Despite repeated demands, defendants have not paid
17 these sums to Martin. Further, defendants, including Outland USA, wrongfully
18 canceled plaintiff Martin's medical benefits and coverage at a time when his 20
19 year-old son was undergoing very expensive treatment for cancer. This wrongful
20 conduct was outrageous and has caused defendant Martin mental pain and
21 anguish.

22 56. Pursuant to the Agreement and California law, Martin is entitled to his
23 reasonable attorneys' fees, costs and expenses, and punitive damages.

24 57. On or about February 1, 2001, Forhan, for good and valuable
25 consideration, entered into an employment agreement with defendants Outland
26 Canada and Outland USA. On or about December 18, 2001, defendants Outland
27 Canada and Outland USA, without good cause and without good reason, fired or
28 terminated Forhan.

29 58. By agreement, defendants Outland USA and Outland Canada owe to
30 Forhan more than \$225,000, plus withheld medical benefits, attorneys' fees, and

1 punitive damages. Despite repeated demands, defendants have not paid these
2 sums to Forhan.

3 59. Pursuant to the Agreements and California law, Forhan is entitled to
4 his reasonable attorneys' fees, costs and expenses, and punitive damages.

5 **6. FAILURE TO PAY WAGES:**

6 60. Defendants Outland Canada and Outland USA have failed to pay
7 plaintiffs Martin and Forhan wages, salary, and benefits due them pursuant to
8 contract and pursuant to California law.

9 61. Despite repeated demands for payment, defendants Outland Canada
10 and Outland USA continue to refuse to pay wages, salary, and benefits due
11 plaintiffs Martin and Forhan, and Martin and Forhan have been damaged by this
12 wrongful conduct.

13 62. This claim is governed by California law and plaintiffs Martin and
14 Forhan are entitled to their reasonable attorney's fees, costs and expenses, and
15 any and all additional damages allowed by California law, including punitive
16 damages.

17 **7. CONVERSION/REPLEVIN:**

18 63. On or about November of 2001, plaintiffs Martin and Forhan were,
19 and still are, owners and are entitled to the immediate possession of personal
20 property wrongfully taken by defendants.

21 64. Defendants have wrongfully taken possession of property belonging
22 to plaintiffs Martin and Forhan and despite repeated demands have not returned
23 those items, converting them to defendants' possession.

24 65. Defendants have refused and still refuse to return the personal
25 property and they have wrongfully and unlawfully converted the property to their
26 own use, all to plaintiffs Martin and Forhan's damage.

27 **FOREIGN LAW:**

28 66. By contract and by common law, California law applies to plaintiffs'
29 breach of employment contract, tortious interference with Martin's and Forhan's
30 contract, and wage and salary claims.

1 **PUNITIVE DAMAGES:**

2 67. Punitive damages of plaintiffs Martin and Forhan are expected to
3 exceed \$1,000,000 each.

4 **ATTORNEYS' FEES:**

5 68. By California law, plaintiffs Martin and Forhan are entitled to their
6 reasonable attorneys' fees on their breach of contract claims. By Washington
7 law, plaintiffs are entitled to their reasonable attorneys' fees if they are
8 successful on their shareholder derivative claim and they create a common fund
9 for Outland USA shareholders.

10 **INCORPORATION BY REFERENCE:**

11 69. Except as amended herein, plaintiffs, except plaintiff Klassen,
12 incorporate its original complaint filed and served herein as though fully pled
13 herein. Every paragraph herein above is incorporated, as necessary, into every
14 cause of action claimed herein.

15 **V. PRAYER FOR RELIEF**

16 WHEREFORE, plaintiffs, except plaintiff Klassen, pray for judgment as
17 follows:

18 A. For a declaration that certain actions taken by defendants in the name
19 of Outland Canada and Outland USA have been without proper corporate
20 authority, without legal authority, and therefore are void and of no legal force or
21 effect.

22 B. For the appointment of a receiver to take charge of the books, papers,
23 property and assets of Outland USA, and that the receiver be authorized, until
24 the further order of the court, to continue the business of Outland USA.

25 C. For a determination that the actions of defendants Bell, Knight and
26 Mihaichuk, and others, including but not limited to, the actions taken in
27 November and December of 2001, and all actions taken since that date in the
28 name of Outland USA and/or Outland Canada and including but not limited to
29 excluding plaintiffs from the corporate premises, property, and activities, was a
30 breach of their fiduciary duty to the plaintiffs, that this wrongful conduct was a

1 proximate cause of damage to said plaintiffs, and for a determination of the
2 amount of damages caused thereby.

3 D. For a determination that the actions of defendants Outland Canada,
4 Knight, Bell, and Mihaichuk in causing the termination of employment of Martin
5 and Forhan by Outland USA and/or Outland Canada was wrongful interference
6 with plaintiffs contract rights, that this wrongful conduct was a proximate cause
7 of damage to Martin and Forhan, and for a determination of the amount of
8 damages caused thereby.

9 E. For a determination that defendants, including defendant Outland USA,
10 if this court determines that the defendants who fired Martin and Forhan had the
11 proper authority of Outland USA, terminated the employment contracts of Martin
12 and Forhan without cause and wrongfully refused to pay severance pay and
13 benefits due to Martin and Forhan following said termination, that this wrongful
14 conduct was a proximate cause of damage, and for a determination of the
15 damages caused by defendants' breaches of contract.

16 F. For a determination that defendants Outland Canada and Outland USA
17 owe wages, salary and/or benefits to plaintiffs Martin and Forhan pursuant to
18 California law, including, but not limited to, punitive damages.

19 G. For a determination that the actions of defendants Outland Canada,
20 Knight, Bell, and Mihiachuk in unlawfully taking over the Outland USA business
21 premises, taking and refusing to return, and in some cases using, valuable
22 personal property belonging to Martin and Forhan converted plaintiffs property
23 and were willful, wanton, malicious and oppressive, have damaged plaintiffs and
24 that plaintiffs are entitled to an award of exemplary and punitive damages.

25 H. For a determination that all of the personal property belonging to
26 plaintiffs should be ordered returned to said plaintiffs.

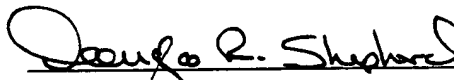
27 I. For an award of damages to each plaintiff, according to proof, of the
28 damages caused each by defendants wrongful conduct.

29 J. For punitive damages on all claims in which punitive damages are
30 allowed by law, including plaintiffs claim for breach of an employment contract.

- 1 K. For plaintiffs' reasonable attorneys fees, costs and expenses.
2 L. For such other and further relief as the court may deem proper.
3

4 DATED this 21st day of June, 2002.
5

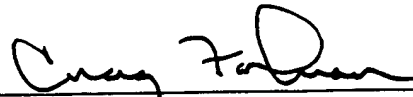
6 SHEPHERD and ABBOTT
7

8 
9

10 Douglas R. Shepherd of
11 Attorneys for Plaintiffs
12 WSBA #9514

13 STATE OF WASHINGTON }
14 COUNTY OF WHATCOM } ss

15 Craig Forhan, being first duly sworn upon oath, deposes and says: I am
16 one of the plaintiffs herein. I have read the foregoing Amended Complaint,
17 know the contents thereof, and believe the same to be true.
18

19 
20

21 SIGNED AND SWORN to before me this 21st day of June, 2002, by Craig
22 Forhan.
23

24 
25

26 NOTARY PUBLIC in and for the state
27 of Washington, residing at Bellingham.
28 My commission expires: 4-29-04.
29
30

EMPLOYMENT AGREEMENT

This Employment Agreement ("AGREEMENT") entered into as of the 1st day of February, 2001, effective immediately upon approval by the Board of Directors ("EFFECTIVE DATE"), is entered into by and between Terry Martin (the "EMPLOYEE") and Outland Technologies, Inc., a body corporate having its registered office in the province of Alberta, Canada ("OUTLAND CANADA"), and its wholly owned subsidiary, Outland Technologies (USA), Inc., a Washington corporation and Outland Technologies, Inc. (the "COMPANY").

The COMPANY and prospective EMPLOYEE desire to establish an Employment Agreement in the capacity herein described, on the terms and conditions and subject to the rights of termination hereinafter set forth, and EMPLOYEE is willing to accept such employment on such terms and conditions.

In consideration of the mutual agreements hereinafter set forth, the EMPLOYEE and the COMPANY have agreed and do hereby confirm their agreement as follows:

1. **EMPLOYMENT AS PRESIDENT AND CHIEF EXECUTIVE OFFICER.** The COMPANY does hereby employ, engage, and hire EMPLOYEE as Chief Executive Officer for the COMPANY, and the EMPLOYEE does hereby accept and agree to such hiring, engagement and employment. The EMPLOYEE'S duties during the employment period (defined below) shall be the duties set forth in this Agreement, shall include authority to enter into contracts, including all Executive Employment contracts other than his own, hire, terminate or bind the COMPANY and duties regarding the operations of the COMPANY as authorized by the Board of Directors. The President and Chief Executive Officer for Outland Technologies (USA), Inc. and Outland Technologies (Canada), Inc. shall be primarily responsible for the operation, management and direction of the COMPANY, shall serve at the direction of the Board of Directors and shall enjoy all of the same privileges and benefits of other President's and CEO's similarly situated and as hereinafter set forth. The EMPLOYEE shall devote his full-time energy and skill to the performance of his duties for the COMPANY and for the benefit of the COMPANY, reasonable vacations authorized by the COMPANY's Board of Directors, and reasonable absences because of illness excepted; and shall exercise due diligence and care in the performance of his duties for the COMPANY under this AGREEMENT. Because Outland Canada and Outland USA are related entities, a change in EMPLOYEE'S position from one entity (CANADA or USA) shall not change the compensation of EMPLOYEE set forth in this AGREEMENT.

2. **TERM OF AGREEMENT.** This AGREEMENT commences on the effective date and ends on the date of termination of the EMPLOYEE'S employment ("TERMINATION DATE"), under this or any successor agreement and shall be referred to as the "EMPLOYMENT PERIOD". The term ("TERM") of this AGREEMENT shall commence on the effective date, shall continue for a period of one (1) year, and at EMPLOYEE'S option, shall be automatically renewed thereafter for successive one (1) year terms to be renegotiated by COMPANY and EMPLOYEE, unless terminated in writing as set forth in this AGREEMENT. This AGREEMENT shall renew automatically thereafter for one (1) year terms unless sooner terminated as provided for in this AGREEMENT.

3. COMPENSATION.

(a) The COMPANY shall pay the EMPLOYEE, and the EMPLOYEE agrees to accept from the COMPANY, in full payment for all of his services to be performed for the COMPANY, compensation in the total annual sum set forth below, subject to the terms and conditions of this AGREEMENT and payable bi-monthly or at such other times or times as the EMPLOYEE and the COMPANY shall mutually agree:

POSITION:	President and Chief Executive Officer of Outland Canada and Outland USA.
ANNUAL BASE SALARY:	\$303,329.00 with annual cost of living increases of five percent (5%) per year.
RENEWABLE TERM:	Effective immediately upon approval by Board of Directors, for a term of one (1) year with one (1) year automatic renewable terms thereafter.
STOCK OPTIONS:	Stock Options to purchase, at the time of signing this Agreement, 250,000 common shares of the Company at the exercise price of \$4.00 per share (Canadian), plus an additional 250,000 shares when those additional shares become available under the Company's Stock Option Plan (not to exceed one (1) year from this Agreement at the next stock split price) pursuant to the terms and conditions of said Plan and pricing of the stock exchange upon which the shares are listed.
INCENTIVE COMPENSATION:	Subject to satisfaction of criteria established by the Board of Directors and achievement of such objectives as the Board of Directors or compensation committee may establish, cash bonuses and other incentive compensation including stock options, at least once annually.
PROFIT SHARING:	Three percent (3%) of annual Company profits shall be paid to Employee as an Executive Compensation annual bonus.
ANNUAL STOCK OPTIONS:	Stock options per Company policy. Employee may elect to use annual

bonus/profit sharing amount to acquire shares in Outland Technologies, Inc. in a like amount. If Employee makes said election, excise taxes shall be paid by the Company.

SEVERANCE AGREEMENT:

Eighteen (18) months. This will include annual base salary, annual bonus (pro rata) and medical benefits for eighteen months.

INSURANCE PACKAGE:

Company medical (PPO) plan for employee and family.

LIFE INSURANCE:

Per company policy, if any.

HOLIDAYS:

Per company policy.

VACATION:

Four (4) weeks per year. Five (5) weeks per year after two (2) years of service. If vacation not taken during year, balance of vacation time will be paid to Employee.

RETIREMENT PLAN:

401K retirement plan or equivalent when adopted.

COMPANY EXPENSES:

Company car, cell phone and business expenses per Company policy, including Company credit card.

RELOCATION EXPENSES:

Moving expenses, security deposit and first year's rent, lease or mortgage payments.

(b) EMPLOYEE and COMPANY stipulate and agree that all intellectual property, ideas, concepts, inventions and ventures for profit created during the term of his employment are made for hire for COMPANY and are hereby assigned to and exclusively owned by the COMPANY. This is a material covenant without which the COMPANY would not enter into this AGREEMENT;

(c) Terry Martin reserves the right to be a Director of the COMPANY (USA and Canada) and/or appoint a Director in his place at all times during the term of this AGREEMENT.

4. **FRINGE BENEFITS.** EMPLOYEE shall be entitled to participate in any benefit programs adopted from time to time by the COMPANY for the benefit of its employees, and EMPLOYEE shall be entitled to receive such other fringe benefits as may be granted to him from time to time by the COMPANY's Board of Directors.

(a) Stock Options. EMPLOYEE and COMPANY acknowledge that, as of March 1, 2001, there were issued an outstanding and owned by Terry Martin, options to purchase 190,000 shares of the COMPANY'S common stock, par value \$4.00 per share Canadian ("Common Stock"). As of the Effective Date of this Agreement, the COMPANY hereby grants to EMPLOYEE, an additional 250,000 shares when those additional shares become available under the Company's Stock Option Plan (not to exceed one (1) year from this Agreement at the next stock split price) pursuant to the terms and conditions of said Plan and pricing of the stock exchange upon which the shares are listed. The parties further acknowledge and agree, and the COMPANY does hereby also grant to EMPLOYEE, additional incentive Stock Options equal to 3% of the COMPANY'S gross annual revenue, each year during the term of this Agreement, at an exercise price pursuant to the terms and conditions of Company's Stock Option Plan and pricing of stock exchange upon which said shares are listed.

(b) Incentive Compensation. Subject to the satisfaction of criteria established by the Board of Directors and the achievement of such objectives as the Board of Directors or compensation committee may establish, EMPLOYEE may receive additional cash bonuses and other incentive compensation including stock options, it being understood that the Board of Directors or compensation committee shall at least once annually consider the payment of additional incentive compensation in the form of cash and/or stock options to EMPLOYEE.

(c) Benefit Plans. EMPLOYEE shall be entitled to participate in any benefit plans and employee benefits available to other Employees of the COMPANY, subject to any restrictions (including waiting) specified in such Plans. COMPANY has no present 401K plan.

(d) Vacation. EMPLOYEE shall be entitled to four (4) weeks of paid vacation per calendar year for years one and two of employment by the COMPANY; five (5) weeks per calendar year for years three or more of service (3+); with such vacation to be scheduled and taken in accordance with the COMPANY's standard Vacation Policies, one week at a time.

(e) Keyman Insurance. COMPANY shall obtain for the benefit of COMPANY and EMPLOYEE, Keyman Term Life Insurance in an amount to be determined by the Board of Directors. The beneficiaries of said Keyman Insurance shall be 75% COMPANY and 25% any beneficiary designated by EMPLOYEE.

5. **BUSINESS EXPENSES.** The COMPANY shall reimburse the EMPLOYEE for any and all necessary, customary, and usual expense, properly receipted in accordance with COMPANY policies, incurred by EMPLOYEE on behalf of the COMPANY.

6. **TERMINATION OF EMPLOYEE'S EMPLOYMENT.**

(a) Death. If the EMPLOYEE dies while employed by the COMPANY, his employment shall immediately terminate. The COMPANY's obligation to pay the EMPLOYEE's Base Monthly Compensation shall cease as of the date of EMPLOYEE's death. However, EMPLOYEE'S spouse shall receive half of EMPLOYEE'S Base Monthly Compensation for twelve (12) months from EMPLOYEE'S date of death. Thereafter, EMPLOYEE's beneficiaries, trustees, or estates shall receive benefits in accordance with the COMPANY's insurance and other applicable programs and plans then in effect.

(b) Disability. If, as a result of EMPLOYEE's mental or physical incapacity, EMPLOYEE shall be unable to perform the services for the COMPANY contemplated by this AGREEMENT in the manner he previously performed during a period of one hundred twenty (120) business days in any consecutive seven (7) month period ("disability"), EMPLOYEE's employment may be terminated by the COMPANY for disability. During any period prior to such termination during which EMPLOYEE is absent from the full-time performance of EMPLOYEE's duties with the COMPANY due to disability, the COMPANY shall continue to pay EMPLOYEE's Base Monthly Compensation at the rate in effect at the commencement of such period of disability. Any such payments made to EMPLOYMENT shall be reduced by amounts received from disability insurance obtained or provided by the COMPANY. Subsequent to the termination provided for in Section 6(b), EMPLOYEE's benefits shall be determined under the COMPANY's retirement, insurance, and other compensation programs then in effect in accordance with the terms of such programs.

(c) Termination by the COMPANY. The COMPANY may terminate EMPLOYEE's employment under this AGREEMENT without cause upon thirty (30) days written notice or for "cause" at any time prior to the expiration of the term of the AGREEMENT only upon the occurrence of any one or more of the following events: (i) the material breach of this AGREEMENT by EMPLOYEE, including repeated willful neglect of EMPLOYEE's duties. However, physical presence at the business location shall not be considered neglect of EMPLOYEE'S duties or lack of diligence unless specifically directed by the Board of Directors. EMPLOYEE's material lack of diligence and attention in performing services required by this Agreement, including minimum performance requirements, or EMPLOYEE's willful failure to implement or adhere to policies established by, or directives of, the COMPANY's Board of Directors; (ii) Conduct of a criminal nature that may have an adverse impact on the COMPANY's reputation and standing in the industry and community; or (iii) fraudulent conduct in connection with the business affairs of the COMPANY, regardless of whether said conduct is designed to defraud the COMPANY or others.

In the event of termination for cause, the COMPANY's obligation to pay EMPLOYEE shall cease as of the termination date. If EMPLOYEE's employment is terminated for cause, EMPLOYEE's employment may be terminated immediately without any advance written notice. No compensation in any form shall be payable to EMPLOYEE upon EMPLOYEE'S termination for cause.

(d) Termination by the EMPLOYEE for Good Reason. The EMPLOYEE shall have the right to terminate this AGREEMENT for Good Reason. For purposes of this AGREEMENT, "Good Reason" shall mean the occurrence without the EMPLOYEE's prior written consent, of any one or more of the following events: (i) termination or reassignment of James Klassen into any position other than Vice President - Intellectual Property Development; (ii) the assignment to the EMPLOYEE of any duties that are materially inconsistent with, or reflect a material continuing reduction of the powers and responsibilities of EMPLOYEE, or a change of the EMPLOYEES's reporting responsibilities as set forth in this Agreement, or material improper interference with the EMPLOYEE's ability to materially perform the duties and responsibilities set forth in this Agreement.

The EMPLOYEE agrees to provide the COMPANY with thirty (30) days prior written notice of any termination for Good Reason, during which thirty (30) day period the COMPANY shall have the right to cure the circumstances giving rise to the Good Reason stated in such Notice. In the event of termination for Good Reason, the EMPLOYEE shall receive the compensation pursuant to the provisions of Section 7 hereof.

(c) Employee Voluntarily Quits. In the event EMPLOYEE voluntarily quits, COMPANY shall owe no additional consideration to EMPLOYEE and all compensation benefits shall be terminated effective immediately.

7. **COMPENSATION UPON TERMINATION BY THE COMPANY OTHER THAN FOR CAUSE OR BY THE EMPLOYEE FOR GOOD REASON.** If the EMPLOYEES employment shall terminate (i) by election of the COMPANY other than for cause or (ii) by the election of EMPLOYEE for Good Reason, the EMPLOYEE shall be entitled to the following benefits:

(a) Payment of unpaid Base Monthly Compensation. Payment of annual base salary, annual bonus (pro rata) and medical benefits for eighteen (18) months. Said severance compensation shall be paid to the EMPLOYEE by COMPANY, in a lump sum, within five (5) days of the termination date.

(b) Presumption of Paragraph 7 - Termination. All terminations shall be presumed to be pursuant to this Paragraph 7 until proven otherwise by competent admissible evidence.

8. **NON-COMPETITION, CONFIDENTIALITY, TRADE SECRET AND PRIVACY PROVISIONS.**

(a) Right to Company Materials. EMPLOYEE agrees that all styles and all COMPANY DATA, designs, customer lists, materials, books, files, reports, correspondence, records, and other documents (COMPANY materials) used, prepared, or made available to EMPLOYEE, shall be and shall remain the property of the COMPANY. EMPLOYEE agrees that this information is confidential, represents protected trade secrets of COMPANY and EMPLOYEE shall keep the information confidential. Upon the termination of employment or the expiration of this AGREEMENT, all COMPANY materials shall be returned immediately to the COMPANY, and EMPLOYEE shall not make or retain any copies thereof nor shall EMPLOYEE disclose to any other person or use said information for profit nor to interfere with the present and prospective economic advantage of COMPANY.

(i) Company Data Defined. All proprietary technology, patent information, trade secrets, confidential information, formulas, patterns, devices, compilations of information, drawings, computer files, e-mail, magnetic disks, videos, photographs, audio and verbal information, notes and information, including samples, herein jointly referred to as "DATA" created or furnished by EMPLOYEE or disclosed to EMPLOYEE shall remain the exclusive property of the COMPANY and shall be used solely for COMPANY business.

(b) Anti-Solicitation. EMPLOYEE promises and agrees that during the term of this AGREEMENT, EMPLOYEE will not influence, or attempt to influence customers or supplies of the COMPANY, or any of its present or future subsidiaries or affiliates, either directly or indirectly, to divert their business to any individual, partnership, firm, corporation, or other entity then in competition with the business of the COMPANY, or any subsidiary or affiliate of the COMPANY.

(c) Non-Compete/Non-Employment with Competitors. This AGREEMENT is given as part of the consideration in exchange for the sale of OUTLAND DESIGN TECHNOLOGIES, INC. to COMPANY, of which EMPLOYEE is a significant stockholder. During the term of this AGREEMENT and for the twelve (12) month period commencing on the termination date, EMPLOYEE promises and agrees that he will not directly or indirectly compete with the COMPANY or any of its products or services; will not engage in any form of employment or consulting with any competitors of the COMPANY; and that these covenants apply at all times during the term of employment.

(d) Consequences of Breach. In the event EMPLOYEE violates any of the provisions of Paragraph 8(a), (b) or (c) the COMPANY shall have the right to pursue all legal, equitable and other relief available to COMPANY and all rights of EMPLOYEE to compensation and EMPLOYEE benefits under this contract shall be terminated.

Either party may change such party's address for notices by Notice duly given pursuant hereto. In the event of EMPLOYEE's termination and physical absence from the business office of COMPANY, EMPLOYEE's last known home address shall be the proper address for all Notices unless changed by written notice duly given pursuant hereto.

9. NOTICES. All Notices and other communications under this AGREEMENT shall be in writing and shall be given by facsimile or first class mail, certified or registered with return receipt requested, and shall be deemed to have been duly given three (3) days after mailing or twenty-four (24) hours after transmission by facsimile to the respective persons named below:

IF TO THE COMPANY: Terry Martin, President
OUTLAND TECHNOLOGIES, INC.
19200 Von Karman Avenue, Suite 600
Irvine, CA 92612
(949) 622-5420 - Tel.
(949) 622-5530 - Fax

IF TO THE EMPLOYEE: Terry Martin
OUTLAND TECHNOLOGIES, INC.
19200 Von Karman Avenue, Suite 600
Irvine, CA 92612
(949) 622-5420 - Tel.
(949) 622-5530 - Fax

COMPANY and EMPLOYEE'S address effective May 1, 2001 will be 17032 Murphy, Irvine, California. Either party may change such party's address for notices by Notice duly given pursuant hereto. In the event of EMPLOYEE's termination and physical absence from the business office of COMPANY, EMPLOYEE's last known home address shall be the proper address for all Notices unless changed by written notice duly given pursuant hereto.

10. **ALTERNATIVE DISPUTE RESOLUTION.** In the event of a dispute between COMPANY and EMPLOYEE, the dispute shall be settled by the following method of Alternative Dispute Resolution. This shall be the exclusive method for determining all legal and equitable dispute between the parties and both COMPANY and EMPLOYEE knowingly, intelligently and voluntarily waive the right to a jury trial, court trial, and the right to appeal except in rare circumstances where the right to appeal from a binding arbitration award exists as a matter of law. The order of dispute resolution shall be as follows: (i) executive parties with decision making abilities shall meet face to face to identify and resolve all disputed issues. In the event the dispute or disputes are not resolved at the face to face meeting, the disputes shall proceed to the next level; (ii) the COMPANY shall pay for an independent mediator to facilitate and help the parties negotiate a dispute for a maximum of a four (4) hour period in accordance with the rules of the American Arbitration Association. In the event the dispute or disputes are not resolved by the voluntary mediation process, final resolution involve the remaining disputed issues shall be resolved at the third level; (iii) all issues not resolved at mediation shall be resolved by binding arbitration in accordance with the rules of the American Arbitration Association. The arbitration hearing shall not exceed eight (8) hours unless the Arbitrator approves time in excess of eight (8) hours. Each party shall advance an equal share of the cost of the arbitration and the filing fees, and cost of the arbitrator shall become an item of costs. The prevailing party shall be entitled to recover said costs.

11. **EFFECT OF PRIOR AGREEMENTS.** This AGREEMENT terminates and supersedes any and all prior agreements and understandings between the parties with respect to employment, the COMPANY and with respect to the compensation of the EMPLOYEE by the COMPANY from and after the effective date of this AGREEMENT.

12. **ASSIGNMENT AND SUCCESSORS.** This AGREEMENT is personal in its nature and neither of the parties shall, without the consent of the other, assign or transfer this AGREEMENT or any rights or obligations hereunder; provided that, in the event of a merger, consolidation, transfer, or sale of all or substantially all the assets of the COMPANY with or to any other individual or entity, this AGREEMENT shall be binding upon and inure to the benefit of such successors, and such successors shall discharge and perform all of the promises, covenants, duties and obligations of the COMPANY as set forth in this AGREEMENT.

13. **GOVERNING LAW.** This AGREEMENT and the legal relations thus created between the parties hereto shall be governed by and construed under and in accordance with the laws of the State of California subject to the rules and regulations of the American Arbitration Association for binding resolution of disputes and venue shall be in the County of Orange.

14. **ENTIRE AGREEMENT; HEADINGS.** This AGREEMENT embodies the entire AGREEMENT of the parties respecting all matters within its scope and may be modified only in a writing signed by both parties. Section headings in this AGREEMENT are intended for convenience of reference to the general subject matter only, and shall not constitute a part of this

AGREEMENT for any other purpose. Both parties agree that they shall not, at any time, contend that they did not read the Paragraph because of the content of the Section heading.

15. **WAIVER AND MODIFICATION.** Failure to insist upon strict compliance with any of the terms, covenants, or conditions hereof shall not be deemed a waiver of such term, covenant, or condition, nor shall any waiver or relinquishment of or failure to insist upon strict compliance with any right or power hereunder, at any one or more times, be deemed a waiver or relinquishment of such right or power at any other time or times. This AGREEMENT shall not be modified in any manner except by a writing executed by each party hereto.

16. **SEVERABILITY.** In the event that a court of competent jurisdiction or arbitrator determines that any portion of this AGREEMENT is in violation of any statute or public policy, the terms necessary to comply with any such statute or public policy shall be implied as a matter of law into this AGREEMENT, and this AGREEMENT shall be reformed to comply with said statute and/or public policy. All portions of this AGREEMENT that do not violate any statute or public policy shall continue in full force and effect. Further, any arbitration order or court order striking any portion of this AGREEMENT shall modify the stricken terms, as narrowly as possible, to give as much effect as possible to the intentions of the parties under this AGREEMENT at the time this AGREEMENT was entered into.

17. **INDEMNIFICATION.** The COMPANY shall indemnify and hold EMPLOYEE harmless to the maximum extent permitted by Section 317 of the California Corporations Code and its successor's statutes and other applicable laws.

18. **COUNTER-PARTS.** This AGREEMENT may be executed in several counter-parts, each of which shall be deemed to be an original but all of which together will constitute one (1) and the same instrument.

19. **REVIEW BY LEGAL COUNSEL.** Both parties have been advised to seek independent legal advice for purposes of reviewing this AGREEMENT, explaining the benefits and burdens of the consideration bargain for, and the legal effect of each and every term of this AGREEMENT. COMPANY further acknowledges that it has been advised by EMPLOYEE, in the capacity of legal counsel, to seek independent legal advice before signing this AGREEMENT. Neither the COMPANY nor EMPLOYEE shall be required to disclose the content of any attorney-client communications, and each party expressly warrants that they have received, understood and acted upon the foregoing advice.

IN WITNESS WHEREOF, the Board of Directors of COMPANY has directed this AGREEMENT to be executed by its duly authorized Sr. Vice President and General Counsel, and the EMPLOYEE has hereunto signed this AGREEMENT as the date first written above, in the City of Irvine, State of California.



Terry Martin, President and CEO

OUTLAND TECHNOLOGIES, INC. and
OUTLAND TECHNOLOGIES (USA), INC.


By: _____

Michael J. Lancaster, Sr. Vice
President and General Counsel

EMPLOYMENT AGREEMENT

This Employment Agreement ("AGREEMENT") entered into as of the 1st day of May, 2001, effective upon approval by the Board of Directors ("EFFECTIVE DATE"), is entered into by and between Craig Forhan (the "EMPLOYEE") and Outland Technologies, Inc., a body corporate having its registered office in the province of Alberta, Canada ("OUTLAND CANADA"), by and through its wholly owned subsidiary, Outland Technologies (USA), Inc., a Washington corporation (the "COMPANY").

The COMPANY and prospective EMPLOYEE desire to establish an Employment Agreement in the capacity herein described, on the terms and conditions and subject to the rights of termination hereinafter set forth, and EMPLOYEE is willing to accept such employment on such terms and conditions.

In consideration of the mutual agreements hereinafter set forth, the EMPLOYEE and the COMPANY have agreed and do hereby confirm their agreement as follows:

1. **EMPLOYMENT AS CHIEF FINANCIAL OFFICER.** The COMPANY does hereby employ, engage, and hire EMPLOYEE as Chief Financial Officer for the COMPANY, and the EMPLOYEE does hereby accept and agree to such hiring, engagement and employment. The EMPLOYEE'S duties during the employment period (defined below) shall be the duties set forth in this Agreement, shall not include any authority to enter into contracts, hire, terminate or bind the company or any duties regarding the operations of the COMPANY except as authorized by the President, Sr. Vice President/General Counsel or Board of Directors. The duties of the Chief Financial Officer of Outland Technologies (USA), Inc. shall include acting as the Chief Accounting Officer both as to private and confidential accountings, and public filings including 10K, 10Q's, annual reports and all other accounting functions which may be directed by the President, Sr. Vice President/General Counsel or Board of Directors. The EMPLOYEE shall devote his full-time energy and skill to the performance of his duties for the COMPANY and for the benefit of the COMPANY, reasonable vacations authorized by the COMPANY'S Board of Directors, and reasonable absences because of illness excepted; and shall exercise due diligence and care in the performance of his duties for the COMPANY under this AGREEMENT.

2. **TERM OF AGREEMENT.** The term ("TERM") of this AGREEMENT shall commence on the effective date, shall continue for a period of one (1) year, and at EMPLOYEE'S option, shall be automatically renewed thereafter for an additional one (1) year on terms renegotiated by COMPANY and EMPLOYEE, unless terminated in writing as set forth in this AGREEMENT. This AGREEMENT commences on the effective date and ends on the date of termination of the EMPLOYEE'S employment ("TERMINATION DATE"), under this or any successor agreement and shall be referred to as the "EMPLOYMENT PERIOD". The term shall renew automatically thereafter for one (1) year terms unless sooner terminated as provided for in this AGREEMENT.

3. COMPENSATION.

(a) The COMPANY shall pay the EMPLOYEE, and the EMPLOYEE agrees to accept from the COMPANY, in full payment for all of his services to be performed for the COMPANY, compensation in the total annual sum set forth below, subject to the terms and conditions of this AGREEMENT and payable bi-monthly or at such other times or times as the EMPLOYEE and the COMPANY shall mutually agree:

POSITION:

Chief Financial Officer of Outland Technologies, Inc. and Outland Technologies (USA), Inc.

ANNUAL BASE SALARY:

150,000
~~\$120,000~~ with annual cost of living increases of five percent (5%) per year.

TERM:

One (1) year, effective immediately.

PROFIT SHARING:

Profit Sharing per Company policy when adopted.

STOCK:

5,000 common shares of Outland Technologies, Inc., employee to pay all taxes.

SEVERANCE AGREEMENT:

Six (6) months. This will include annual base salary and medical benefits for six months.

INSURANCE PACKAGE:

Company medical (PPO) plan for employee and family.

LIFE INSURANCE:

Per company policy, if any.

HOLIDAYS:

Per company policy.

VACATION:

Two (2) weeks per year. Three (3) weeks per year after three (3) years of service.

RETIREMENT PLAN:

401K retirement plan or equivalent when adopted.

COMPANY EXPENSES:

Car allowance per Company policy, cell phone and reimbursement of business expenses per Company policy, including Company credit card.

ADDITIONAL CPA EXPENSES:

Annual CPA dues; membership in American Certified Public Accountant's Association and Value Analysts Association; and continuing education expenses to maintain CPA license.

(b) EMPLOYEE and COMPANY stipulate and agree that all intellectual property, ideas, concepts, inventions and ventures for profit created by EMPLOYEE during the term of his employment are made for hire for COMPANY and are hereby assigned to and exclusively owned by the COMPANY. This is a material covenant without which the COMPANY would not enter into this AGREEMENT;

4. **FRINGE BENEFITS.** EMPLOYEE shall be entitled to participate in any benefit programs adopted from time to time by the COMPANY for the benefit of its employees, and EMPLOYEE shall be entitled to receive such other fringe benefits as may be granted to him from time to time by the COMPANY's Board of Directors.

(a) **Benefit Plans.** EMPLOYEE shall be entitled to participate in any benefit plans and employee benefits available to other Employees of the COMPANY, subject to any restrictions (including waiting) specified in such Plans. COMPANY has a present 401K plan.
Does not have

(b) **Vacation.** EMPLOYEE shall be entitled to two (2) weeks of paid vacation per calendar year for years one and two of employment by the COMPANY; three (3) weeks per calendar year for years three or more of service (3+); with such vacation to be scheduled and taken in accordance with the COMPANY's standard Vacation Policies, one week at a time.
Exhaustive vacation? takes Precise

5. **BUSINESS EXPENSES.** The COMPANY shall reimburse the EMPLOYEE for any and all necessary, customary, and usual expense, properly receipted in accordance with COMPANY policies, incurred by EMPLOYEE on behalf of the COMPANY.

6. **TERMINATION OF EMPLOYEE'S EMPLOYMENT.**

(a) **Death.** If the EMPLOYEE dies while employed by the COMPANY, his employment shall immediately terminate. The COMPANY's obligation to pay the EMPLOYEE's Base Monthly Compensation shall cease as of the date of EMPLOYEE's death. However, EMPLOYEE'S spouse shall receive 50% of EMPLOYEE'S base pay for six (6) months. Thereafter, EMPLOYEE's beneficiaries, trustees, or estates shall receive benefits in accordance with the COMPANY's insurance and other applicable programs and plans then in effect.

(b) **Disability.** If, as a result of EMPLOYEE's mental or physical incapacity, EMPLOYEE shall be unable to perform the services for the COMPANY contemplated by this AGREEMENT in the manner he previously performed during a period of one hundred twenty (120) business days in any consecutive seven (7) month period ("disability"), EMPLOYEE's employment may be terminated by the COMPANY for disability. During any period prior to such termination during which EMPLOYEE is absent from the full-time performance of EMPLOYEE's duties with the COMPANY due to disability, the COMPANY shall continue to pay EMPLOYEE's Base

Monthly Compensation at the rate in effect at the commencement of such period of disability. Any such payments made to EMPLOYMENT shall be reduced by amounts received from disability insurance obtained or provided by the COMPANY. Subsequent to the termination provided for in Section 6(b), EMPLOYEE's benefits shall be determined under the COMPANY's retirement, insurance, and other compensation programs then in effect in accordance with the terms of such programs.

(c) Termination by the COMPANY. The COMPANY may terminate EMPLOYEE's employment under this AGREEMENT without cause upon thirty (30) days written notice or for "cause" at any time prior to the expiration of the term of the AGREEMENT only upon the occurrence of any one or more of the following events: (i) the material breach of this AGREEMENT by EMPLOYEE, including repeated willful neglect of EMPLOYEE's duties. However, physical presence at the business location shall not be considered neglect of EMPLOYEE'S duties or lack of diligence unless specifically directed by the President of the COMPANY. EMPLOYEE's material lack of diligence and attention in performing services required by this Agreement, including minimum performance requirements, or EMPLOYEE's willful failure to implement or adhere to policies established by, or directives of, the COMPANY's President; (ii) Conduct of a criminal nature that may have an adverse impact on the COMPANY's reputation and standing in the industry and community; or (iii) fraudulent conduct in connection with the business affairs of the COMPANY, regardless of whether said conduct is designed to defraud the COMPANY or others.

In the event of termination for cause, the COMPANY's obligation to pay EMPLOYEE shall cease as of the termination date. If EMPLOYEE's employment is terminated for cause, EMPLOYEE's employment may be terminated immediately without any advance written notice. No compensation in any form shall be payable to EMPLOYEE upon EMPLOYEE'S termination for cause.

(d) Termination by the EMPLOYEE for Good Reason. The EMPLOYEE shall have the right to terminate this AGREEMENT for Good Reason. For purposes of this AGREEMENT, "Good Reason" shall mean the occurrence without the EMPLOYEE's prior written consent, of any one or more of the following events: (i) termination or reassignment of EMPLOYEE into any position other than Chief Financial Officer or Controller; (ii) the assignment to the EMPLOYEE of any duties that are materially inconsistent with, or reflect a material continuing reduction of the powers and responsibilities of EMPLOYEE, or a change of the EMPLOYEE'S reporting responsibilities as set forth in this Agreement, or material improper interference with the EMPLOYEE's ability to materially perform the duties and responsibilities set forth in this Agreement.

The EMPLOYEE agrees to provide the COMPANY with thirty (30) days prior written notice of any termination for Good Reason, during which thirty (30) day period the COMPANY shall have the right to cure the circumstances giving rise to the Good Reason stated in such Notice. In the event of termination for Good Reason, the EMPLOYEE shall receive the compensation pursuant to the provisions of Section 7 hereof.

(e) Employee Voluntarily Quits. In the event EMPLOYEE voluntarily quits, COMPANY shall owe no additional consideration to EMPLOYEE and all benefits shall be terminated effective immediately.

7. **COMPENSATION UPON TERMINATION BY THE COMPANY OTHER THAN FOR CAUSE OR BY THE EMPLOYEE FOR GOOD REASON.** If the EMPLOYEES employment shall terminate (i) by election of the COMPANY other than for cause or (ii) by the election of EMPLOYEE for Good Reason, the EMPLOYEE shall be entitled to the following benefits:

(a) Payment of unpaid Base Monthly Compensation. Payment of annual base salary, annual bonus (pro rata) and medical benefits for eighteen (18) months. Said severance compensation shall be paid to the EMPLOYEE by COMPANY, in a lump sum, within five (5) days of the termination date.

(b) Presumption of Paragraph 7 - Termination. All terminations shall be presumed to be pursuant to this Paragraph 7 until proven otherwise by competent admissible evidence.

8. **NON-COMPETITION, CONFIDENTIALITY, TRADE SECRET AND PRIVACY PROVISIONS.**

(a) Right to Company Materials. EMPLOYEE agrees that all styles and all COMPANY DATA, designs, customer lists, materials, books, files, reports, correspondence, records, and other documents (COMPANY materials) used, prepared, or made available to EMPLOYEE, shall be and shall remain the property of the COMPANY. EMPLOYEE agrees that this information is confidential, represents protected trade secrets of COMPANY and EMPLOYEE shall keep the information confidential. Upon the termination of employment or the expiration of this AGREEMENT, all COMPANY materials shall be returned immediately to the COMPANY, and EMPLOYEE shall not make or retain any copies thereof nor shall EMPLOYEE disclose to any other person or use said information for profit nor to interfere with the present and prospective economic advantage of COMPANY.

(i) Company Data Defined. All proprietary technology, patent information, trade secrets, confidential information, formulas, patterns, devices, compilations of information, drawings, computer files, e-mail, magnetic disks, videos, photographs, audio and verbal information, notes and information, including samples, herein jointly referred to as "DATA" created or furnished by EMPLOYEE or disclosed to EMPLOYEE shall remain the exclusive property of the COMPANY and shall be used solely for COMPANY business.

(b) Anti-Solicitation. EMPLOYEE promises and agrees that during the term of this AGREEMENT, EMPLOYEE will not influence, or attempt to influence customers or supplies of the COMPANY, or any of its present or future subsidiaries or affiliates, either directly or indirectly, to divert their business to any individual, partnership, firm, corporation, or other entity then in competition with the business of the COMPANY, or any subsidiary or affiliate of the COMPANY.

(c) Soliciting Employees. During the term of this AGREEMENT and for the twelve-month period commencing on the Termination Date, EMPLOYEE promises and agrees that he will not directly or indirectly solicit any of the COMPANY's employees to work for any businesses, individual, partnership, firm, corporation, or other entity then in competition with the business of the COMPANY or any subsidiary or affiliate with the COMPANY.

(d) Non-Compete/Non-Employment with Competitors. This AGREEMENT is given as part of the consideration in exchange for the sale of OUTLAND DESIGN TECHNOLOGIES, INC. to COMPANY, of which EMPLOYEE is a significant stockholder. During the term of this AGREEMENT and for the twelve (12) month period commencing on the termination date, EMPLOYEE promises and agrees that he will not directly or indirectly compete with the COMPANY or any of its products or services; will not engage in any form of employment or consulting with any competitors of the COMPANY; and that these covenants apply at all times during the term of employment.

(e) Consequences of Breach. In the event EMPLOYEE violates any of the provisions of Paragraph 8(a), (b), (c) or (d), the COMPANY shall have the right to pursue all legal, equitable and other relief available to COMPANY and all rights of EMPLOYEE to compensation and EMPLOYEE benefits under this contract shall be terminated.

Either party may change such party's address for notices by Notice duly given pursuant hereto. In the event of EMPLOYEE's termination and physical absence from the business office of COMPANY, EMPLOYEE's last known home address shall be the proper address for all Notices unless changed by written notice duly given pursuant hereto.

9. **NOTICES.** All Notices and other communications under this AGREEMENT shall be in writing and shall be given by facsimile or first class mail, certified or registered with return receipt requested, and shall be deemed to have been duly given three (3) days after mailing or twenty-four (24) hours after transmission by facsimile to the respective persons named below:

IF TO THE COMPANY: Terry Martin, President
OUTLAND TECHNOLOGIES (USA), INC.
17032 Murphy Avenue
Irvine, CA 92614
(949) 222-0662 - Tel.
(949) 222-0652 - Fax

IF TO THE EMPLOYEE: Craig Forhan
c/o OUTLAND TECHNOLOGIES (USA), INC.
17032 Murphy Avenue
Irvine, CA 92614
(949) 222-0662 - Tel.
(949) 222-0652 - Fax

Either party may change such party's address for notices by Notice duly given pursuant hereto. In the event of EMPLOYEE's termination and physical absence from the business office of COMPANY, EMPLOYEE's last known home address shall be the proper address for all Notices unless changed by written notice duly given pursuant hereto.

10. ALTERNATIVE DISPUTE RESOLUTION. In the event of a dispute between COMPANY and EMPLOYEE, the dispute shall be settled by the following method of Alternative Dispute Resolution. This shall be the exclusive method for determining all legal and equitable dispute between the parties and both COMPANY and EMPLOYEE knowingly, intelligently and voluntarily waive the right to a jury trial, court trial, and the right to appeal except in rare circumstances where the right to appeal from a binding arbitration award exists as a matter of law. The order of dispute resolution shall be as follows: (i) executive parties with decision making abilities shall meet face to face to identify and resolve all disputed issues. In the event the dispute or disputes are not resolved at the face to face meeting, the disputes shall proceed to the next level; (ii) the COMPANY shall pay for an independent mediator to facilitate and help the parties negotiate a dispute for a maximum of a four (4) hour period in accordance with the rules of the American Arbitration Association. In the event the dispute or disputes are not resolved by the voluntary mediation process, final resolution involve the remaining disputed issues shall be resolved at the third level; (iii) all issues not resolved at mediation shall be resolved by binding arbitration in accordance with the rules of the American Arbitration Association. The arbitration hearing shall not exceed eight (8) hours unless the Arbitrator approves time in excess of eight (8) hours. Each party shall advance an equal share of the cost of the arbitration and the filing fees, and cost of the arbitrator shall become an item of costs. The prevailing party shall be entitled to recover said costs.

11. EFFECT OF PRIOR AGREEMENTS. This AGREEMENT terminates and supersedes any and all prior agreements and understandings between the parties with respect to employment, the COMPANY and with respect to the compensation of the EMPLOYEE by the COMPANY from and after the effective date of this AGREEMENT.

12. ASSIGNMENT AND SUCCESSORS. This AGREEMENT is personal in its nature and neither of the parties shall, without the consent of the other, assign or transfer this AGREEMENT or any rights or obligations hereunder; provided that, in the event of a merger, consolidation, transfer, or sale of all or substantially all the assets of the COMPANY with or to any other individual or entity, this AGREEMENT shall be binding upon and inure to the benefit of such successors, and such successors shall discharge and perform all of the promises, covenants, duties and obligations of the COMPANY as set forth in this AGREEMENT.

13. GOVERNING LAW. This AGREEMENT and the legal relations thus created between the parties hereto shall be governed by and construed under and in accordance with the laws of the State of California subject to the rules and regulations of the American Arbitration Association for binding resolution of disputes and venue shall be in the County of Orange.

14. ENTIRE AGREEMENT; HEADINGS. This AGREEMENT embodies the entire AGREEMENT of the parties respecting all matters within its scope and may be modified only in a writing signed by both parties. Section headings in this AGREEMENT are intended for convenience of reference to the general subject matter only, and shall not constitute a part of this AGREEMENT for any other purpose. Both parties agree that they shall not, at any time, contend

that they did not read the Paragraph because of the content of the Section heading.

15. **WAIVER AND MODIFICATION.** Failure to insist upon strict compliance with any of the terms, covenants, or conditions hereof shall not be deemed a waiver of such term, covenant, or condition, nor shall any waiver or relinquishment of or failure to insist upon strict compliance with any right or power hereunder, at any one or more times, be deemed a waiver or relinquishment of such right or power at any other time or times. This AGREEMENT shall not be modified in any manner except by a writing executed by each party hereto.

16. **SEVERABILITY.** In the event that a court of competent jurisdiction or arbitrator determines that any portion of this AGREEMENT is in violation of any statute or public policy, the terms necessary to comply with any such statute or public policy shall be implied as a matter of law into this AGREEMENT, and this AGREEMENT shall be reformed to comply with said statute and/or public policy. All portions of this AGREEMENT that do not violate any statute or public policy shall continue in full force and effect. Further, any arbitration order or court order striking any portion of this AGREEMENT shall modify the stricken terms, as narrowly as possible, to give as much effect as possible to the intentions of the parties under this AGREEMENT at the time this AGREEMENT was entered into.

17. **INDEMNIFICATION.** The COMPANY shall indemnify and hold EMPLOYEE harmless to the maximum extent permitted by Section 317 of the California Corporations Code and its successor's statutes.

18. **COUNTER-PARTS.** This AGREEMENT may be executed in several counter-parts, each of which shall be deemed to be an original but all of which together will constitute one (1) and the same instrument.

19. **REVIEW BY LEGAL COUNSEL.** Both parties have been advised to seek independent legal advice for purposes of reviewing this AGREEMENT, explaining the benefits and burdens of the consideration bargain for, and the legal effect of each and every term of this AGREEMENT. COMPANY further acknowledges that it has been advised by EMPLOYEE, in the capacity of legal counsel, to seek independent legal advice before signing this AGREEMENT. Neither the COMPANY nor EMPLOYEE shall be required to disclose the content of any attorney-client communications, and each party expressly warrants that they have received, understood and acted upon the foregoing advice.

IN WITNESS WHEREOF, the COMPANY has caused this AGREEMENT to be executed by its duly authorized Director and Chief Executive Officer, and the EMPLOYEE has hereunto signed this AGREEMENT as the date first written above, in the City of Irvine, State of California.

OUTLAND TECHNOLOGIES, INC.
OUTLAND TECHNOLOGIES (USA), INC.

CRAIG FORHAN, Chief Financial
Officer

By: Terry Martin, President and CEO

MAY - 2 2002

THE HONORABLE THOMAS S. ZILLY

RECEIVED

JUL 2 4 2002

OFFICE OF PETITIONS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OUTLAND TECHNOLOGIES (USA), Inc., a)
Washington corporation; OUTLAND)
DESIGN TECHNOLOGIES, INC., a)
Washington corporation; UNICK)
INVESTMENTS, LLC, a Washington limited)
liability company; TERRY MARTIN, as)
director of Outland Technologies (USA), Inc.,)
JAMES IRELAND, as a director of Outland)
Technologies (USA) Inc., CRAIG FORHAN,)
as a director of Outland Technologies (USA),)
Inc.; STEVE FRYER, as a director of Outland)
Technologies (USA), Inc.; and JAMES)
KLASSEN, as a director of Outland)
Technologies (USA), Inc.,)

Plaintiffs,

vs.

OUTLAND TECHNOLOGIES, INC., an)
Alberta Canada corporation; TERRY)
KNIGHT; KEN BELL; and GARRY)
MIHAICHUK,)

Defendants.

NO. CV02-0229Z

**DEFENDANTS' MOTION FOR
PRELIMINARY INJUNCTION**

NOTE ON MOTION CALENDAR:
MAY 17, 2002

ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

This case involves the intellectual property rights to certain valuable technology, namely the "D-2 Technology," a rotary positive displacement device with potential applications in a broad spectrum of industries. The D-2 Technology is similar to, and competitive with, another rotary positive displacement device, the "CvR™ Technology." Outland Technologies (USA), Inc. ("Outland USA"), which is wholly owned by defendant Outland Technologies, Inc. ("Outland Canada") has patents relating to the CvR™ Technology, and also has filed a patent application relating to the D-2 Technology.

Plaintiff James Klassen, who invented both the CvR™ Technology and the D-2 Technology, *also* has a patent application pending for the D-2 Technology (in his own name), even though Outland USA (the employer for whom Mr. Klassen invented the D-2 Technology) is entitled to all patent rights. Outland USA almost certainly will prevail in this action and obtain the rights to any patent issued to Mr. Klassen, *but this will be too late*. Terry Martin, Mr. Klassen's cousin and the former president of Outland USA, has indicated his and Mr. Klassen's intention to sell the patent rights to a third party. Such a sale would cut off Outland USA's rights to the patent, and make any subsequent, court-ordered assignment from Mr. Klassen to Outland USA void. Even if Mr. Klassen is unable to sell the patent rights, he may compromise the value of the patent through the patent prosecution process, including narrowing the scope of the patent so that he can design around any patent issued (and later assigned to Outland USA as a result of this lawsuit).

To prevent the total loss of Outland USA's patent rights, and consequent irreparable harm to Outland Canada, the Court now should preliminarily enjoin Mr. Klassen, and anyone acting in concert with him or on his behalf, from attempting to sell or license the D-2 Technology, or continuing to prosecute his patent application, pending resolution of this lawsuit.

II. FACTS

Based on the Complaint for Declaratory Judgment filed by Plaintiffs ("Complaint") and the First Amended Answer, Affirmative Defenses, and Counterclaims ("Counterclaims") filed by Defendants, this case is going to involve many complicated legal and factual disputes. Plaintiffs seek judicial determination of whether certain actions taken by Outland USA and Outland Canada were authorized and lawful, of the rights and duties of the plaintiffs, and as to which individuals are the lawful directors and officers of Outland USA. Complaint at ¶¶34-39. Defendants also seek declaratory relief, and have asserted claims against Plaintiffs for, inter alia, breach of fiduciary duty, misappropriation of trade secrets, conversion, and fraud. Counterclaims at ¶¶41-100. However, this section is limited to essential background information and those facts which are relevant to this very narrow, but important, motion. The facts contained in this section are based on the Declarations of Ken Bell ("Bell Decl.") and Michael Hughes ("Hughes Decl.").

In the mid-1990s, plaintiff James Klassen, an inventor, created T&J Enterprises with his cousin, plaintiff Terry Martin. Bell Decl. at ¶ 3. Subsequently, Messrs. Klassen and Martin also formed Outland Design Technologies, Inc. ("Outland Design"), which was majority-owned by T&J Enterprises. Id. at ¶ 3.

In 1997, Outland Design and EcoTech Canada Ltd. ("EcoTech") (whose successor in interest is 718844 Alberta Inc.) created Outland Hydraulics, Inc., which in 1998 was renamed Outland Technologies (USA), Inc. ("Outland USA"). Id. at ¶ 5. EcoTech was issued 50% of the shares in Outland USA, in return for its contribution of \$300,000 (US). Id. Outland Design also was issued 50% of the shares in Outland USA, in return for its contribution of technology, including all rights to the CvR™ Technology, and all existing or future hydraulic technology invented by Outland Design (such as the D-2 Technology). Id.

1 In 1998, Outland Design and EcoTech also created Outland Technologies, Inc. ("Outland
2 Canada") to market and license the Outland USA technology. Id. at ¶ 7. Like Outland USA,
3 Outland Canada was 50% owned by Outland Design and 50% owned by EcoTech. Id.

4 In order to raise additional funding, Messrs. Klassen and Martin brought in a new
5 management team (the "Canadian Management") in 2000. Id. at ¶ 9 The Canadian Management
6 included defendant Ken Bell, and later defendants Terry Knight and Garry Mihaichuk. Id. The
7 Canadian Management began raising funding, and additional Outland Canada stock was issued.
8 Id. Thus, Messrs. Klassen and Martin (through Outland Design) owned slightly less than 50% of
9 the outstanding shares.

10 In 2000, Outland Canada purchased all of Outland Design's and all of EcoTech's shares
11 in Outland USA for \$5,000,000 (US) (including \$2,500,000 to Messrs. Klassen and Martin
12 through Outland Design). Id. at ¶ 11.

13 From April 2000 to May 2001, the Canadian Management raised more than \$15,000,000
14 (CAN) for Outland Canada. Id. at ¶ 12. These funds were distributed to Outland USA on an as-
15 needed basis. Id.

16 Mr. Klassen worked every day at Outland USA at the direction of Outland USA
17 management. Id. at ¶ 15. He was assisted in his inventive work by other Outland USA
18 employees. Id. All of his equipment and supplies were provided by Outland USA. Id. He was
19 paid with Outland USA funds (through Outland Design, to avoid U.S. visa problems which
20 might have arisen if there were a change in his employment). Id. In August 2000, Mr. Klassen's
21 cousin, then-president Terry Martin, created an organizational chart showing Mr. Klassen as an
22 Outland USA employee. Id. at ¶ 14.

23 In 2000, while an Outland USA employee, Mr. Klassen invented the D-2 Technology,
24 which is similar to and competitive with the CvR™ Technology. Id. at ¶¶ 13 and 18. Messrs.
25 Klassen and Martin first concealed the invention of the D-2 Technology, then denied that it was

1 competitive with the CVR™ Technology, then attempted to mislead the corporation into
2 purchasing the technology (which it already had all rights to). Id. at ¶¶ 16-23. Mr. Martin
3 indicated that if Outland USA did not buy the D-2 Technology, it would be sold to a third party.
4 Id. at ¶ 23.

5 Outland Canada filed a non-provisional patent application for the D-2 Technology on
6 February 7, 2002. Id. at ¶ 26. (A provisional patent application already had been filed.) Outland
7 USA management asked Mr. Klassen to execute an assignment of the D-2 Technology that
8 would confirm Outland USA's ownership of the D-2 Technology. Id. Mr. Klassen refused to
9 sign the assignment, and advised Outland USA management that he had filed his own non-
10 provisional patent application. Id.

11 III. ARGUMENT

12 A. The Preliminary Injunction Standard

13 A preliminary injunction should be granted where the moving party shows "either '(1) a
14 combination of probable success on the merits and the possibility of irreparable injury, or (2) that
15 serious questions are raised and the balance of hardships tips sharply in its favor.'" Citizens
16 Alliance to Protect our Wetlands v. Wynn, 908 F. Supp. 825, 829 (W.D. Wash. 1995) (quoting
17 Big Country Foods, Inc. v. Bd. of Educ., 868 F.2d 1085, 1088 (9th Cir. 1989)). "Under this
18 formula, the degree of irreparable injury required increases as the probability of success on the
19 merits decreases." Id. Injunctions are particularly appropriate in cases involving patent rights.
20 See 35 U.S.C. § 283 (specifically providing jurisdiction to grant an injunction "to prevent the
21 violation of any right secured by patent").

22 B. Outland Canada Is Likely To Succeed On The Merits

23 Outland USA, wholly owned by Outland Canada, is entitled all D-2 Technology patent
24 rights because (1) Mr. Klassen has a fiduciary duty to assign the D-2 Technology patent to
25

1 Outland USA, and (2) Mr. Klassen was an employee of Outland USA hired to invent, and an
2 employee that is hired to invent is obligated to assign his inventions to his employer.

3 **1. Mr. Klassen Has A Fiduciary Duty To Assign The D-2 Technology Patent**

4 “[W]here the inventor is more than an employee and occupies a special relationship of
5 trust and confidence to the business, courts under certain circumstances have held it inequitable
6 for the individual to retain a title which more properly belongs to the company.” Kennedy v.
7 Wright, 676 F. Supp. 888, 892 (C.D.Ill. 1988). See also Great Lakes Press Corp. v. Froom, 695
8 F. Supp. 1440, 1446 (W.D.N.Y. 1987); LeFiell v. United States, 162 Ct.Cl. 865 (1963); Dowse
9 v. Federal Rubber Co., 254 F. 308, 315 (N.D.Ill. 1918). Mr. Klassen bears this obligation in this
10 case.

11 Mr. Klassen and others created Outland USA for the purpose of commercializing his
12 hydraulic inventions. Bell Decl. at ¶ 4. Mr. Klassen was the driving inventive force behind the
13 business. Together with his cousin, Terry Martin, Mr. Klassen led the Canadian Management to
14 believe that all of Mr. Klassen’s inventive work on hydraulic technologies was for the benefit of
15 Outland USA. Bell Decl. at ¶ 17. Given the special trust and confidence placed in Mr. Klassen
16 by Outland USA, it would be inequitable for Mr. Klassen to retain a patent “which more properly
17 belongs to the company.” Kennedy, 676 F. Supp. at 892. This is especially true where the
18 patents are “manifestly important to the well-being of the company.” Id. at 893.

19 Because the competing CvR™ Technology and D-2 Technology are at the heart of
20 Outland USA’s business, and given the special relationship between Mr. Klassen and Outland
21 USA, Mr. Klassen has a fiduciary duty to assign the D-2 Technology patent to Outland USA.

22 **2. Mr. Klassen Is Obligated To Assign The D-2 Technology Patent As An**
23 **Employee Hired To Invent**

24 Even if Mr. Klassen does not owe a fiduciary duty to Outland USA to assign the D-2
25 Technology patent, he still is obligated to assign the patent because (a) he was an Outland USA
employee; (b) he was hired to invent; and (c) an employee hired to invent is obligated to assign

1 the inventions to his employer.

2 **a. Mr. Klassen Was Employed By Outland USA**

3 “[T]he chief, and most decisive, factor in determining whether the relationship is that of
4 employer and employee ... is the right of control over the work or thing to be done.” Miles v.
5 Pound Motor Co., 10 Wn.2d 492, 506, 117 P.2d 179 (1941) (distinguishing employees from
6 independent contractors). Other considerations may include “the nature of the business, the time,
7 place, duration, quantity, and nature of the work performed, the skill and supervision required,
8 the furnishing of equipment, materials, and supplied, the payment of the necessary expenses, the
9 basis of compensation for the work, the right to hire and discharge assistants, and the right to
10 terminate the employment.” Id. See also Marquis v. City of Spokane, 130 Wn.2d 97, 110, 922
11 P.2d 43 (1996); Sills v. Sorenson, 192 Wash. 318, 324, 73 P.2d 798 (1937); Hollingsworth v.
12 Robe Lumber Co., 182 Wash. 74, 77, 45 P.2d 614 (1935).

13 Outland USA controlled every aspect of Mr. Klassen’s inventive work on the
14 technologies at issue here. As discussed in the facts section above, Mr. Klassen worked at
15 Outland USA, was managed by Outland USA, and was assisted by other Outland USA
16 employees. Bell Decl. at ¶ 15. He received all of his equipment and material from Outland
17 USA, and was paid by Outland USA (through Outland Design for purposes of his U.S. work
18 visa). Id. Looking to the “right of control” and all the other factors, the Court should determine
19 that Mr. Klassen was an employee of Outland USA at the time he invented the D-2 Technology,
20 even though no formal employment agreement was in place at that time.

21 **b. Mr. Klassen Was Employed To Invent Hydraulic Technologies**
22 **Like The D-2 Technology**

23 As illustrated by the description in the facts section of the relationships between the
24 numerous entities involved in this case, the whole purpose of Outland USA was to
25 commercialize Mr. Klassen’s hydraulic technology inventions. Mr. Klassen was employed – and

1 paid - specifically to invent such hydraulic technologies, and did so, both in terms of
2 improvements to the CVR™ Technology as well as the D-2 Technology itself.

3 There are a number of evidentiary factors which may be considered in the determination
4 of whether an employment is "an employment to invent," but "[t]he primary factor ... is the
5 specificity of the task assigned to the employee." 8 Donald S. Chisum, Chisum on Patents §
6 22.03[2] at 22-30 (2001). Mr. Klassen's task could not have been any more specific. Not only
7 was he employed and paid to invent hydraulic technologies, but the corporation itself was
8 formed specifically to raise funding and commercialize such inventions by Mr. Klassen. Bell
9 Decl. at ¶ 5. Thus, looking to "the specificity of the task assigned" and the other factors, the
10 Court should determine that Mr. Klassen was an employee hired and compensated to invent for
11 Outland USA.

12 **c. Mr. Klassen Is Obligated To Assign His Inventions to Outland**
13 **USA**

14 Disputes between employers and employees over ownership of patent rights have been
15 litigated in the courts of this country, including the United States Supreme Court, since at least
16 1843. See McClurg v. Kingsland, 42 U.S. (1 How.) 202, 11 L.Ed. 102 (1843). However, by
17 now it is "well-settled at the general level ... [that] an employer owns employee inventions if the
18 employee was specifically hired to exercise his or her 'inventive faculties.'" Chisum, supra, §
19 22.03 at 22-11. This principle has been recognized at least since 1924, when the Supreme Court
20 decided the case of Standard Parts Co. v. Peck, 264 U.S. 52, 44 S.Ct. 239, 68 L.Ed. 560 (1924),
21 and held that an invention is the property "of him who engaged the services and paid for them."
22 Standard Parts, 264 U.S. at 59-60. See also United States v. Dubilier Condenser Corp., 289 U.S.
23 178, 187-188, 53 S.Ct. 554, 77 L.Ed. 1114 (1933). This rule also makes a great deal of common
24 sense, as "[w]hen the purpose for employment thus focuses on invention, the employee has
25 received full compensation for his or her inventive work." Teets v. Chromalloy Gas Turbine
Corp., 83 F.3d 403, 407 (Fed. Cir. 1996).

1 Mr. Klassen's obligation to assign his inventions under this rule arises pursuant to an
2 implied-in-fact contract between Mr. Klassen and Outland USA. See Teets, 83 F.3d at 407. An
3 implied-in-fact contract arises out of the parties' conduct, as opposed to one that arises out of a
4 written or oral agreement. See Plumbing Shop v. Pitts, 67 Wn.2d 514, 517, 408 P.2d 382 (1965).
5 Here, the core business of Outland USA towards which both Mr. Klassen, as its inventor
6 employee, and the Canadian Management directed their efforts, was the commercialization of the
7 hydraulic technologies invented by Mr. Klassen. Just as there is no dispute that the CVR™
8 Technology belongs to Outland USA, or that the CVR™ Technology improvements belong to
9 Outland USA, there should be no dispute that the D-2 Technology belongs to Outland USA.
10 Though Mr. Klassen now attempts to deny Outland USA the D-2 Technology, the conduct of
11 both parties described above created an implied-in-fact contract for him to assign *all* such
12 technologies. That was the whole point of employing him, and paying him, as an inventor.

13 Outland USA, "[h]aving given consideration for inventive services and having assumed
14 the risk that such services might not be successful, ... should receive as the benefit of the bargain
15 any resulting intellectual property rights." Chisum, supra, § 22.03[2] at 22-30. Mr. Klassen is
16 obligated to assign to Outland USA these intellectual property rights.

17 **C. Outland Canada Will Suffer Irreparable Injury If Mr. Klassen Is Not Enjoined**

18 **1. Mr. Klassen Should Be Enjoined From Selling Or Licensing The D-2
19 Technology**

20 To show irreparable injury, Outland Canada must demonstrate that its legal remedies are
21 inadequate. Ross-Simons of Warwick, Inc. v. Baccarat, Inc., 102 F.3d 12, 18 (1st Cir. 1996). In
22 other words, if Outland Canada "suffers a substantial injury that is not accurately measurable or
23 adequately compensable by money damages, irreparable harm is a natural sequel." Id. at 19.

24 The irreparable injury Outland Canada faces if Mr. Klassen is not enjoined from selling
25 or licensing the D-2 Technology is nothing less than the total loss of all its patent rights.
"[W]hen a legal title holder of a patent transfers his or her title to a third party purchaser for

1 value without notice of an outstanding equitable claim or title, the purchaser takes the entire
2 ownership of the patent, free of any prior equitable encumbrance.” Filmtec Corp. v. Allied-
3 Signal Inc., 939 F.2d 1568, 1573 (Fed. Cir. 1991) (citing Hendrie v. Sayles, 98 U.S. 546, 549, 25
4 L.Ed. 176 (1879)). Moreover, under 35 U.S.C. § 261, even an assignee of *legal* title will have
5 their rights cut off by a subsequent bona fide purchaser for value without notice of the prior
6 assignment, unless the earlier assignment is timely recorded. See 35 U.S.C. § 261; Filmtec
7 Corp., 939 F.2d at 1573-74.

8 Mr. Martin has indicated his intention, and Mr. Klassen’s, to sell the D-2 Technology to a
9 third party if it were not purchased by Outland USA. See Bell Decl. at ¶ 23. The D-2
10 technology – and the related CVR™ Technology – are at the heart of Outland USA’s business.
11 Unless Mr. Klassen is enjoined from so selling the patent, Outland USA’s equitable title will be
12 cut off. See Filmtec Corp., 939 F.2d at 1573. Even if the Court were to order Mr. Klassen to
13 assign legal title to Outland USA, that assignment would be moot. See Waterman v. MacKenzie,
14 138 U.S. 252, 259, 11 S.Ct. 334, 34 L.Ed. 923 (1891).

15 It is axiomatic that total elimination of a party’s patent rights are “not accurately
16 measurable or adequately compensable by money damages.” In fact, even in patent *infringement*
17 cases, “[i]rreparable harm is presumed when a clear showing of patent validity and infringement
18 has been made.” Amazon.com, Inc. v. Barnesandnoble.com, Inc., 239 F.3d 1343, 1350 (Fed.
19 Cir. 2001) (emphasis added). This rule “derives in part from the finite term of the patent grant,
20 for patent expiration is not suspended during litigation, and the passage of time can work
21 irremediable harm.” Id. (citation omitted). After all, “[a] patentee is *entitled* to exclude others
22 from the practice of its invention[.]” Bell & Howell Document Management Co. v. Altek
23 Systems, 132 F.3d 701, 708 (Fed. Cir. 1998) (emphasis added).

24 This analysis is even more applicable in the present case than it is in infringement cases.
25 Outland Canada faces the prospect not merely of its patent rights being infringed during the

1 pendency of the litigation, but instead faces the prospect of its patent rights being *cut off*
2 *altogether* during the pendency of the litigation.

3 **2. Mr. Klassen Should Be Enjoined From Prosecuting His Patent** 4 **Application**

5 Even if Mr. Klassen is unable to sell the D-2 Technology patent out from under Outland
6 USA, he still can irreparably injure Outland Canada by so narrowing the scope of the patent
7 through the patent prosecution process that he simply can design around any D-2 Technology
8 patent ultimately issued to Mr. Klassen and assigned to Outland USA. A preliminary injunction
9 should be entered to prevent such narrowing – and possible elimination – of patent rights. See
10 Compact Van Equipment Co., Inc. v. Leggett & Platt, Inc., 566 F.2d 952, 955 (5th Cir. 1978)
11 (affirming injunction against inventor prosecuting narrow patent claims which could preclude
12 former employer's patent on broader claims).

13 Even if Mr. Klassen does not narrow the patent so as to be able to design around it, there
14 are a number of errors he could make in the patent prosecution process which could compromise
15 Outland USA's patent rights. He may make inaccurate representations, fail to respond properly
16 to the patent office, or fail to properly address the prior art. Any of these errors could
17 substantially diminish the value of the patent issued.

18 If not enjoined, Mr. Klassen may eliminate Outland USA's patent rights de jure by
19 selling them to a third party. If he is unable to do so, he may eliminate Outland USA's patent
20 rights de facto by narrowing the scope of the patent to the point where he may design around the
21 patent. Either possibility would irreparably injure Outland Canada by denying it the D-2
22 Technology patent rights.

23 **D. The Balance of Hardships Tips In Favor Of Outland Canada**

24 At a minimum, Outland Canada meets the alternative standard for a preliminary
25 injunction – “that serious questions are raised and the balance of hardships tips sharply in its
favor.” Citizens Alliance, 908 F. Supp. at 829. A serious question is “one as to which the

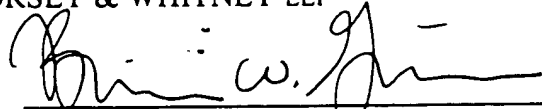
1 moving party has a 'fair chance of success on the merits'." Sierra On-Line, Inc. v. Phoenix
2 Software, Inc., 739 F.2d 1415, 1421 (9th Cir. 1984) (citation omitted). Outland Canada can show
3 at least a "fair" chance of success. Moreover, the harm to Outland Canada (total loss of its patent
4 rights, regardless of who prevails in this lawsuit) far outweighs any potential harm to Mr.
5 Klassen (a delay of a few months before he is permitted to sell the patent, assuming he prevails
6 in this lawsuit; and no harm if Outland Canada prevails). Additionally, as a major stockholder in
7 Outland Canada, Mr. Klassen will even *benefit* from Outland Canada's use of the D-2
8 Technology patent.

9 **IV. CONCLUSION**

10 Outland Canada's business is based on the patentable technologies embodied in the
11 CVR™ Technology and the D-2 Technology. To prevent the irreparable harm that will result if
12 Mr. Klassen is permitted to sell or license the D-2 Technology, or to continue prosecuting his D-
13 2 patent application, the Court now should grant Outland Canada's motion for a protective order
14 and preclude Mr. Klassen, or anyone acting in concert with him or on his behalf, from doing
15 either.

16 DATED this 2nd day of May 2002.

17 DORSEY & WHITNEY LLP

18 

19 By: Randall R. Steichen, WSBA No. 20286
Brian W. Grimm, WSBA No. 29619


20 :
21 Attorneys for Defendants Outland
22 Technologies, Inc., Terry Knight, Ken Bell,
23 and Garry Mihaichuk
24
25

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been
furnished by hand delivery to:

Douglas R. Shepherd
Joe Abbott
Shepherd And Abbott
222 Grand Avenue, Suite B
Bellingham, WA 98225

this 2nd day of May, 2002.



Leslie D. Teves

MAY - 2 2002

THE HONORABLE THOMAS S. ZILLY

RECEIVED

JUL 2 4 2002

OFFICE OF PETITIONS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OUTLAND TECHNOLOGIES (USA), Inc., a)
Washington corporation; OUTLAND)
DESIGN TECHNOLOGIES, INC., a)
Washington corporation; UNICK)
INVESTMENTS, LLC, a Washington limited)
liability company; TERRY MARTIN, as)
director of Outland Technologies (USA), Inc.,)
JAMES IRELAND, as a director of Outland)
Technologies (USA) Inc., CRAIG FORHAN,)
as a director of Outland Technologies (USA),)
Inc.; STEVE FRYER, as a director of Outland)
Technologies (USA), Inc.; and JAMES)
KLASSEN, as a director of Outland)
Technologies (USA), Inc.,)

Plaintiffs,

vs.

OUTLAND TECHNOLOGIES, INC., an)
Alberta, Canada corporation; TERRY)
KNIGHT; KEN BELL; and GARRY)
MIHAICHUK,)

Defendants.

NO. CV02-0229Z

**DECLARATION OF KEN BELL IN
SUPPORT OF DEFENDANTS' MOTION
FOR PRELIMINARY INJUNCTION**

I, KEN BELL, declare:

1. I am more than eighteen years of age, have personal knowledge of the matters set forth herein, and am competent to testify thereto.

DECLARATION OF KEN BELL IN SUPPORT OF DEFENDANTS
MOTION FOR PRELIMINARY INJUNCTION - 1
NO. CV02-0229Z

DORSEY & WHITNEY LLP
U.S. BANK BUILDING CENTER
1420 FIFTH AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101
PHONE: (206) 903-8800
FAX: (206) 903-8820

1 2. I am the Vice President of Corporate Development of Outland Technologies, Inc.,
2 ("Outland Canada"). I joined the company in April 2000.

3 3. Upon information and belief, before I became involved with Outland Canada James
4 Klassen, an inventor, and his cousin, Terry Martin, had created several interrelated companies.
5 First, they formed T&J Enterprises. Second, they created Outland Design Technologies, Inc.
6 ("Outland Design"). Outland Design was majority owned by T&J Enterprises. Klassen, a
7 Canadian citizen, obtained a visa to work in the United States through Outland Design. Third,
8 they created Outland Hydraulics, Inc., later renamed Outland Technologies (USA), Inc.
9 ("Outland USA").

10 4. Outland USA was created to commercialize "the CvR™ Technology" and other
11 technologies invented by Klassen. The CvR™ Technology is a rotary positive displacement
12 device and related technology for use with hydraulic and other technologies. The CvR™
13 Technology has potential application as a rotary positive displacement engine and is potentially
14 capable of being used with different types of fluids as an engine or a positive displacement
15 pump.

16 5. To commercialize the CvR™ Technology and other technologies invented by
17 Klassen, funding was necessary. Upon information and belief, Klassen and Martin's funding
18 efforts resulted in Outland Design signing a letter agreement dated February 26, 1997 (the
19 "EcoTech Agreement") with a group of Canadian individuals organized as EcoTech Canada Ltd.
20 ("EcoTech"). The EcoTech Agreement established Outland Hydraulics, Inc (later renamed
21 "Outland USA"). The EcoTech Agreement provided that EcoTech would form a new Alberta
22 holding company (the "Canadian Holding Company") to purchase 50% of the shares of Outland
23 USA for US \$300,000. The remaining 50% of the shares in Outland USA were given to Outland
24 Design, in return for its contribution of existing and future technology.

25 6. From the beginning, Outland USA was run by Martin as president and chief executive
officer. Martin was also the chairman of the board of directors for Outland USA. Upon

1 information and belief, Klassen continued to be paid as an employee/inventor of Outland Design
2 because he was a Canadian citizen and it was feared by Martin that a change in his employment
3 status would negatively impact his U.S. work visa.

4 7. Outland Canada was subsequently formed to market and license the Outland USA
5 technology. Outland Canada received a worldwide license from Outland USA to commercialize
6 the CvR™ Technology. Outland Canada was and is located in Alberta, Canada and was
7 originally owned by the same shareholders, with the same ratios, as Outland USA.

8 8. Initially, Brian Webb was the president of Outland Canada. Webb was also the
9 chairman of the board of directors for Outland Canada. On April 20, 2000, Webb resigned as
10 president and was appointed chief operating officer. At that time, Martin was appointed
11 president and chief executive officer of Outland Canada. He became chairman of the board of
12 directors of Outland Canada. He was also president and chief executive officer of Outland USA.

13 9. To fund the development efforts of Outland USA, Martin and Klassen brought in a
14 new Canadian management team (the "Canadian Management") to Outland Canada, who began
15 raising money through contacts with Canadian investors. (Initially, I joined Outland Canada
16 management, with Terry Knight and Garry Mihaichuk arriving later.) With the Canadian
17 Management, new directors replaced the previous Canadian directors and the ownership ratio of
18 Outland Canada stock changed (with the issuance of additional stock).

19 10. The Canadian Management recognized and relied upon the substantial value in the
20 inventions and technology owned or to be owned by Outland USA and Klassen's unique role as a
21 substantial beneficial stockholder and employee/inventor for Outland USA.

22 11. As it was anticipated that at some point in the future Outland Canada would go
23 public, it was decided that it was in the best interests of Outland Canada for Outland Canada to
24 own Outland USA. As such, Outland USA was purchased by Outland Canada, and in effect
25 provided funds of approximately \$5 million (US) to the founding shareholders (\$2.5 million to

1 Outland Design and \$2.5 million to the Canadian Holding Company). Martin remained the
2 chairman of the board of directors for both companies.

3 12. From April, 2000 through May, 2001, the Canadian Management raised more than
4 \$15 million (CAN) for Outland Canada. These funds were deposited with Outland Canada and
5 then distributed directly to Outland USA by Outland Canada on an as-needed basis, with the
6 need determined by Martin and Klassen, and their Outland USA management. Klassen
7 continued to be the driving inventive and technical force behind Outland USA.

8 13. Klassen invented (a) improvements to the CvR™ Technology; and (b) a related
9 hydraulic technology called the "D-2 Technology." In approximately the fall of 2000, I was told
10 about the D-2 Technology.

11 14. Martin created an organization chart for Outland USA that showed that both he and
12 Klassen were Outland USA employees. A true and correct copy, to the best of my knowledge, of
13 this organization chart is attached as Exhibit A.

14 15. Klassen's full-time work for Outland USA consisted of the development of the CvR™
15 Technology and improvements to it, as well as new developments in hydraulic technology
16 generally, such as the D-2 Technology. He was assisted in his work by Outland USA
17 employees. His desk, computer, telephone, computer aided design systems and milling
18 machines, and supplies were all those of Outland USA. His compensation was generated
19 through Outland USA, which was a deposit of sufficient funds to Outland Design by Outland
20 USA to cover his paycheck. Klassen worked at the direction of Outland USA management.

21 16. When the D-2 Technology was disclosed by Martin in late 2000, he denied (a) that
22 the D-2 Technology was owned by Outland USA; and (b) that the D-2 Technology was related to
23 or competitive with the CvR™ Technology.

24 17. We (the Canadian Management) were concerned about Martin's conflicts of interest,
25 non-disclosure in the offering memoranda of Outland Canada, and Outland USA's ownership of
the D-2 Technology. On November 22, 2000, Martin assured me that, regarding the D-2

1 Technology, nothing would be done to harm existing shareholders. And, on December 22, 2000,
2 Martin indicated to me that the D-2 Technology would be the property of Outland USA.

3 18. Based on my conversations with Klassen, I've concluded that the D-2 Technology is
4 hydraulic technology and is competitive with the CvR™ Technology. A report ordered by
5 Martin reached this same conclusion.

6 19. On January 24, 2001, Martin represented to the directors of Outland Canada at a
7 directors meeting that the board needed to form a new agreement with him to acquire all present
8 and future inventions created by Klassen.

9 20. Martin convinced the board of directors of Outland Canada to agree to employment
10 contracts between Outland USA and himself, Klassen and Craig Forhan. Partial consideration
11 for the substantial compensation agreed to was that Outland Design would be sold to Outland
12 USA. We believed, through the actions and misrepresentations of Martin and Klassen, that only
13 through the acquisition of Outland Design could Outland USA own the D-2 Technology.

14 21. In April 2001, an employment agreement was executed with Klassen. It had an
15 effective date in February 2001. In this manner, Outland Canada would acquire all of the rights
16 to the D-2 Technology either from Outland Design or from Klassen individually.

17 22. Martin signed the employment agreement between Outland USA and Klassen on
18 behalf of Outland USA. He did not tell us that he and Klassen added a rider to the employment
19 agreement that allowed Klassen to retain any rights Klassen had in the D-2 Technology. The
20 rider states that Klassen's transfer of the D-2 Technology was not part of the employment
21 agreement. However, this rider was never signed by the company.

22 23. In late 2001, Martin tried to sell the D-2 Technology (which was already owned by
23 Outland USA) to Outland USA for approximately \$1.7 million (US). Martin told us that
24 Klassen did not work for Outland USA (and claimed that Klassen was an employee/inventor for
25 Outland Design); he demanded that Outland Canada pay him and Klassen, or Outland Design,
additional money for the D-2 Technology or they would leave and take the D-2 Technology with

1 them. Specifically, at a September 2001 board meeting, Martin stated that Klassen would sell to
2 a third party if Outland Canada did not purchase the D-2 Technology. A true and correct copy,
3 upon information and belief, of Martin's outline for this statement is attached as Exhibit B.

4 24. To date, Martin and Klassen have not transferred or sold Outland Design to Outland
5 USA.

6 25. For reasons related generally to Martin's management of Outland USA, Martin was
7 terminated as an employee of Outland USA and Klassen subsequently resigned. Martin was also
8 replaced in his various capacities as officer and director of Outland Canada and Outland USA. It
9 is believed that he and Klassen remain substantial beneficial stockholders of Outland Canada by
10 virtue of their continued ownership of the majority of the outstanding stock of Outland Design
11 (as Outland Design continues to be a major shareholder of Outland Canada).

12 26. On February 7, 2002, Outland Canada caused to be filed on behalf of Outland USA a
13 non-provisional patent application for the D-2 Technology (the "D-2 Patent Application") with
14 the U.S. Patent and Trademark Office. Prior to filing the D-2 Patent Application, the
15 management of Outland USA requested that Klassen execute an assignment of the D-2
16 Technology confirming ownership of the D-2 Technology in Outland USA. Klassen, through his
17 counsel, failed and refused to sign the assignment, and counsel for Klassen further advised
18 Outland USA management that Klassen had filed his own non-provisional patent application for
19 the D-2 Technology.

20 I declare under penalty of perjury of the laws of the State of Washington and of the
21 United States that the foregoing is true and correct to the best of my knowledge and belief.

22 Signed at CALGARY, ALTA this 20 day of May, 2002.

23
24 
25 KEN BELL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been
furnished by hand delivery to:

Douglas R. Shepherd
James Abbott
Shepherd And Abbott
222 Grand Avenue, Suite B
Bellingham, WA 98225

this 2nd day of May, 2002.



Leslie D. Teves

EXHIBIT A

interoffice memo

Date: 8/16/2000

To: James Klassen, Craig Forhan, Edward Hubbard, ~~Teresa Vietz~~, Heather
Lowe, Don Weiland

From: Terry Martin

RE: Corporate Structure

First I would like to thank each of you as individuals for your input during Outland Technologies' strategy session. As agreed I'm sending the Corporate Structure as we discussed. Attached are the goals for each team for the month of August.

Please feel free to contact me with a questions or concerns.

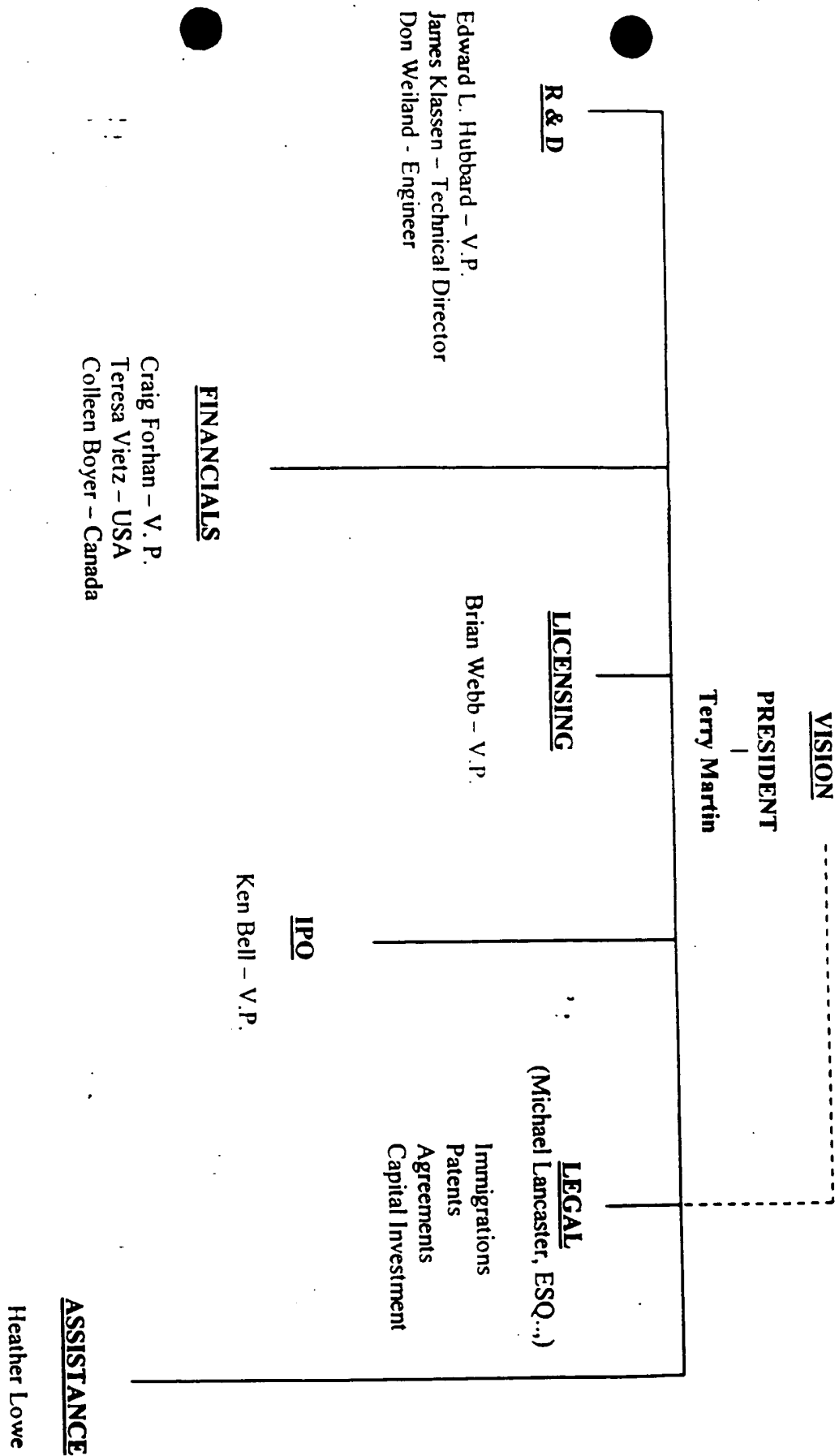
Also, please review the last job description you wrote and send me a copy.

8/16/2000

Confidential

CORPORATE STRUCTURE
AS OF AUGUST 2000

OUTLAND TECHNOLOGIES, INC. & OUTLAND TECHNOLOGIES (USA), INC.



R & D: **Re: 8/10/00** R & D will include identifying the location, equipment and tooling for the new facility. A complete assessment which includes timing, human resources, relocating, taxes, lease option vs. purchase, and employee's with positions defined. Each area should be a milestone in completing this task.

During this time, Weatherford issues must be dealt with in a positive manner. Communication and timing is the issue. I would like to see key dates identified in the development of the axial flow and compressor.

i.e.: September 14, 2000 – Axial Flow Acrylic Models
 October 31, 2000 – Compressor Models
 November 30, 2000 – Bronze Axial Flow

In each date list the issues Outland Technologies, Inc. will need to deal with, along with a resolution to the issue.

Financials: **Re: 8/10/00** Will include both Canada and USA facilities. August 31, 2000 is year end for Canada, which will include USA financials as of May 10, 2000 forward. Complete a plan of action, listing dates of completion on how Outland Technologies, Inc. is going to accomplish these short-term goals.

Year-end in both companies needs to be adjusted to assist with the I. P.O. All communication within the Corporation will be in memo form to keep track for accountability.

The second goal is to review all books from August 1998 to present in both Canada and USA. The team will go back through all months – pre first offering memorandum with Canaccord Capital.

The third goal is in the area of budgets. All areas within the corporate structure from January 1, 2001, to December 31, 2001 needs to be completed.

The fourth goal is to complete a 5-year forecast in Outland Technologies for the I. P. O.

Licensing: **Re: 8/10/00** Licensing will identify all contacts to date and the condition of each contact. A 3-ring binder with all correspondence including verbal communication with dates and time should be completed for each contact.

Licensing needs to layout a plan of action with criteria to assist in identifying industries and products. Industries identified along with the criteria will establish if Outland Technologies should go forward. The criteria will include complete knowledge of each individual and Corporation Outland Technologies makes contact with. A complete history including Directors, Officers, etc. will be completed.

Licensing will also research off shore public trading countries. Establish the upside and downside to each given market.

I. P. O. Re: 8/10/00

The I. P. O. is a crucial area with regard to the future of Outland Technologies. As Outland Technologies looks at the I. P. O. all i's must be dotted with all t's crossed. Outland Technologies must be aware of the advantages and disadvantages which would include: Listing requirements, do we meet them, if so, how. Regulations to securities, pricing and timing, identifying our dealer, along with many other concerns. To help Outland Technologies make a sound decision list all considerations along with the consequences.

While listing all considerations, identify key positions within the organization and criteria within each position. Identify how Outland Technologies will locate these individuals.

As with all areas, milestones must be identified and how Outland Technologies is going to achieve them.

Legal Re: 8/10/00

Legal review will structure a goal orientated review systems. The review will identify the patents and current status. A proposed time-line will be completed identifying the milestones to Outland Technologies patent structure. A review by R & D will be essential in identifying future milestones and structure as Outland Technologies continues to apply for CIP's.

Immigration is becoming more important to Outland Technologies. Human resources will identify a checklist, which Outland Technologies can follow as this area expands.

As Outland Technologies prepares for future capital, all offerings will be reviewed by a set standard, which will be identified for all teams to use. In preparing for the I. P. O. all documents will be reviewed. All documents will be backed up with other documents to file.

All license/development agreements will be reviewed in the final stages at this office. Criteria will be set up with a checklist so Outland Technologies covers all areas within each agreement, prior to review.

Assistance: Re: 8/10/00

This area will identify itself as Outland Technologies steps forward. The assistant will be our first line contact and will assist in any area requested.

The way the assistant is perceived will affect Outland Technologies. The assistant must be business like, along with being able to make the contact comfortable with the available knowledge.

EXHIBIT B

OUTLINE

1. Issues created - D2

- (a) Brian Webb
- (b) Ken Bell
- (c) 718844

2. The issue must be resolved

- (a) James Klassen owns D2, not ODTI
- (b) If you assume ODTI owned D2, then the best case scenario is:
 - (i) Hydraulic applications in D2 - only; and
 - (ii) Right of first refusal for all other applications

Hydraulic operations are those operated by the force and movement of a liquid under pressure. The hydraulic application contemplated at the time the 1997 letter agreement was signed was pumping applications. The transfer of hydraulic fluids.

The other non-hydraulic applications which are available include:

- 1. Use of expansion pressure from natural gas for pressure turbine;
- 2. Steam pressure;
- 3. Thermal pressure;
- 4. Hydro pressure;
- 5. Wind/air turbines;
- 6. Solar;
- 7. Combined cycle gas turbines;

License Agreements are negotiated based on specific applications, in specific industries and in specific territories. The company is in a unique position to acquire all applications, for all industries and all territories throughout the world.

How much do you think that's really worth?

- 3. If the board does not approve a specific offer - the first right of refusal, as a remote potential contingent claim, will be triggered by a third party offer.
- 4. James has made it clear that if the Board does not make a reasonable offer to acquire the D2 Technology, he will solicit a third party offer to trigger any potential first right of refusal. The company will have a period of ten (10) days to fund a cash offer matching the third party offer or the right of refusal, if any, will expire.

5. The company will then be placed in the position of losing the new technology and making a claim against it's key inventor for D2 Hydraulic applications based on an interpretation of a Letter Agreement from 1997 which:
- (a) Contains no reference to the D2 technology in the agreement nor in the Schedule of Intellectual Property attached to the agreement;
 - (b) No claim has been made for the D2 technology for over four (4) years. [February 26, 1997].
 - (c) In fact, no claim was made even after the issue was again presented on January 24, 2001 at the joint Board Meeting. The Board requested that it be investigated by a disinterested board member and it was. No action was taken.
 - (d) No action has ever been taken by anyone asserting any rights to D2.
6. Negative action by the company will have a negative impact.

★ MAY - 2 2002 ★

THE HONORABLE THOMAS S. ZILLY
BY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OUTLAND TECHNOLOGIES (USA), Inc., a)
Washington corporation; OUTLAND)
DESIGN TECHNOLOGIES, INC., a)
Washington corporation; UNICK)
INVESTMENTS, LLC, a Washington limited)
liability company; TERRY MARTIN, as)
director of Outland Technologies (USA), Inc.,)
JAMES IRELAND, as a director of Outland)
Technologies (USA) Inc., CRAIG FORHAN,)
as a director of Outland Technologies (USA),)
Inc.; STEVE FRYER, as a director of Outland)
Technologies (USA), Inc.; and JAMES)
KLASSEN, as a director of Outland)
Technologies (USA), Inc.,)

Plaintiffs,

vs.

OUTLAND TECHNOLOGIES, INC., an)
Alberta Canada corporation; TERRY)
KNIGHT; KEN BELL; and GARRY)
MIHAICHUK,)

Defendants.

NO. CV02-0229Z

**DECLARATION OF MICHAEL HUGHES
IN SUPPORT OF DEFENDANTS'
MOTION FOR PRELIMINARY
INJUNCTION**

I, MICHAEL HUGHES, declare:

1. I am more than eighteen years of age, have personal knowledge of the matters set forth herein, and am competent to testify thereto.

DECLARATION OF MICHAEL HUGHES IN SUPPORT OF
DEFENDANTS' MOTION FOR PRELIMINARY INJUNCTION - 1

NO. CV02-0229Z

DORSEY & WHITNEY LLP
U.S. BANK BUILDING CENTER
1420 FIFTH AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101
PHONE: (206) 903-8800
FAX: (206) 903-8820

1 2. I have been licensed to practice law in the State of Washington since 1999. I have
2 been licensed before the United States Patent and Trademark Office since 1996.

3 3. I have prepared and filed patent applications for Outland Technologies (USA), Inc.
4 ("Outland USA") since 1999, first in my capacity as an associate for the law firm of Hughes &
5 Schacht P.S. (mid-1999 to April 2, 2001) and from thereafter to the present as in-house patent
6 counsel. From the middle of 1999 to the end of 2000, I made several visits to Outland USA.
7 During these visits, I met James Klassen.

8 4. On or about August of 2000, I attended an Outland USA meeting in Lynden, WA.
9 Terry Martin, James Klassen, Ed Hubbard and myself were in attendance in this meeting. One
10 of the topics of this meeting was a new hydraulic technology, a rotary motion and positive
11 displacement device that James Klassen had invented that was referred to as the "D-2
12 Technology." The D-2 Technology was based on two-dimensional surfaces (as opposed to
13 three-dimensional surfaces of the other Outland USA hydraulic technology known as the
14 "CvR™ Technology.")

15 5. Terry Martin, the CEO of Outland USA stated that the D-2 Technology was the
16 property of James Klassen. I recited to the participants in the meeting the general law regarding
17 the duty to assign technology to an employer if the employee was paid to invent and if the
18 invention was done in the scope of employment. Terry Martin responded to me by saying that I
19 did not need to worry about that issue and indicated that eventually all of the technology would
20 end up in the same place.

21 6. I informed all the participants of the meeting that I would have to check to make sure
22 the CvR™ Technology was not relevant prior art to the D-2 Technology in order to assist in
23 protecting it. When I left the meeting, I took some printed out schematics of the D-2 Technology
24 to my office in Bellingham, Washington, and compared the D-2 Technology to U.S. Patent No.
25 5,755,196 (the CvR™ Technology) patent and the cited prior art. I also conducted a search on
the D-2 Technology by employing a search associate, Vance Israel of Accusearch.

1 7. On February 8, 2001, I filed a provisional patent for D-2 Technology.

2 8. In March 2001, Outland USA relocated to Irvine, CA. On April 2, 2001, I became an
3 employee of Outland USA and moved to Irvine, California.

4 9. Between April 2, 2001 until November 22, 2001 (my initial employment period), I
5 drafted several patent applications related to the CvR™ Technology. The patent applications
6 included domestic and Patent Cooperation Treaty (PCT) applications that were filed in the name
7 of Outland USA. The only patent application I ever filed with James Klassen as the inventor that
8 was not to be assigned to Outland USA was the D-2 Technology provisional patent application.

9 10. During my initial employment period I worked with James Klassen daily at the
10 Outland USA offices, where such work included developing manuals showing the methods of
11 making the CvR™ Technology rotors for the benefit of our licensees, documenting the
12 conception of new ideas, brainstorming cause and effect relationships of CvR™ Technology
13 design parameters, development of the various critical and non-critical surface geometries. In
14 September of 2001, James Klassen and I presented a three week course about the CvR™
15 Technology to licensees of the CvR™ Technology.

16 I declare under penalty of perjury of the laws of the State of Washington and of the
17 United States that the foregoing is true and correct to the best of my knowledge and belief.

18 Signed at Calgary, Alberta this 7 day of May, 2002.

19
20 
21 MICHAEL HUGHES

22
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24
25
DECLARATION OF MICHAEL HUGHES IN SUPPORT OF
DEFENDANTS' MOTION FOR PRELIMINARY INJUNCTION - 3

NO. CV02-0229Z

DORSEY & WHITNEY LLP
U.S. BANK BUILDING CENTER
1400 FIFTH AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101
PHONE: (206) 903-6800
FAX: (206) 903-6820

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been
furnished by hand delivery to:

Douglas R. Shepherd
James Abbott
Shepherd And Abbott
222 Grand Avenue, Suite B
Bellingham, WA 98225

this 2nd day of May, 2002.



Leslie D. Teves

★

MAY - 2 2002

★

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OUTLAND TECHNOLOGIES (USA), Inc., a)
Washington corporation; OUTLAND)
DESIGN TECHNOLOGIES, INC., a)
Washington corporation; UNICK)
INVESTMENTS, LLC, a Washington limited)
liability company; TERRY MARTIN, as)
director of Outland Technologies (USA), Inc.,)
JAMES IRELAND, as a director of Outland)
Technologies (USA) Inc., CRAIG FORHAN,)
as a director of Outland Technologies (USA),)
Inc.; STEVE FRYER, as a director of Outland)
Technologies (USA), Inc.; and JAMES)
KLASSEN, as a director of Outland)
Technologies (USA), Inc.,)

Plaintiffs,

vs.

OUTLAND TECHNOLOGIES, INC., an)
Alberta Canada corporation; TERRY)
KNIGHT; KEN BELL; and GARRY)
MIHAICHUK,)

Defendants.

NO. CV02-0229Z

[Defendants' Proposed]

**ORDER GRANTING DEFENDANTS'
MOTION FOR PRELIMINARY
INJUNCTION**

This matter is before the Court on Defendants' Motion for Preliminary Injunction. The Court having considered the moving and opposition papers, the arguments of counsel, and all

[Defendants' Proposed] ORDER GRANTING DEFENDANTS'
MOTION FOR PRELIMINARY INJUNCTION - 1

NO. CV02-0229Z

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1420 FIFTH AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101
PHONE: (206) 903-8800
FAX: (206) 903-8820

1 other matters presented to the Court, and having found that Defendants are likely to succeed on
2 the merits and may suffer irreparable harm if the injunction is not entered, Defendants' Motion is
3 GRANTED.

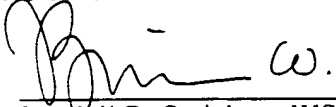
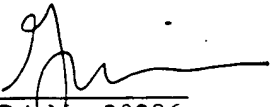
4 Plaintiff James Klassen, and anyone acting in concert with him or on his behalf, are
5 hereby enjoined from selling or licensing the D-2 Technology or taking any action with respect
6 to Mr. Klassen's pending patent application for the D-2 Technology.

7
8 DATED this ____ day of May 2002.

9
10 THE HONORABLE THOMAS S. ZILLY
11 UNITED STATES DISTRICT JUDGE

12 Presented by:

13 DORSEY & WHITNEY LLP

14  
15 By: Randall R. Steichen, WSBA No. 20286
16 Brian W. Grimm, WSBA No. 29619

17 Attorneys for Defendants Outland
18 Technologies, Inc., Terry Knight, Ken Bell,
19 and Garry Mihaichuk
20
21
22
23
24
25

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been
furnished by hand delivery to:

Douglas R. Shepherd
Joe Abbott
Shepherd And Abbott
222 Grand Avenue, Suite B
Bellingham, WA 98225

this 2nd day of May, 2002.



Leslie D. Teves



526 Yale Ave., Suite A
Seattle, WA 98109
Phone: (206) 223-9426
Fax: (206) 223-9475
www.nwlegal.com

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Trans. No.

60242

Firm Name: DORSEY & WHITNEY LLP

(MCE)

Requestor: L. Teves 42

Client Matter # 460159-2

Cause # CV02-0229Z

Case Name
Outland Technologies, Inc.

Date: 5/2/02

Documents
Motion for Preliminary Injunction; Proposed Order; Declaration of Michael Hughes; Declaration of Ken Bell

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Shepherd and Abbott
222 Grand Ave. Suite B
Bellingham, WA 98225

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RV WESTERN DISTRICT

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Seattle, WA 98109
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Firm Name: DORSEY & WHITNEY LLP

Requestor : L. Teves 42

Client Matter # 460159-2

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MAY 02 2002

SHEPHERD AND ABBOTT

⑦ 5/2
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SHEPHERD AND ABBOTT

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OUTLAND TECHNOLOGIES (USA), Inc., a)
Washington corporation; OUTLAND)
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Washington corporation; UNICK)
INVESTMENTS, LLC, a Washington limited)
liability company; TERRY MARTIN, as)
director of Outland Technologies (USA), Inc.,)
JAMES IRELAND, as a director of Outland)
Technologies (USA) Inc., CRAIG FORHAN,)
as a director of Outland Technologies (USA),)
Inc.; STEVE FRYER, as a director of Outland)
Technologies (USA), Inc.; and JAMES)
KLASSEN, as a director of Outland)
Technologies (USA), Inc.,)

Plaintiffs,

vs.

OUTLAND TECHNOLOGIES, INC., an)
Alberta Canada corporation; TERRY)
KNIGHT; KEN BELL; and GARRY)
MIHAICHUK,)

Defendants.

NO. CV02-0229Z

**DECLARATION OF MICHAEL HUGHES
IN SUPPORT OF DEFENDANTS'
MOTION FOR PRELIMINARY
INJUNCTION**

I, MICHAEL HUGHES, declare:

1. I am more than eighteen years of age, have personal knowledge of the matters set forth herein, and am competent to testify thereto.

DECLARATION OF MICHAEL HUGHES IN SUPPORT OF
DEFENDANTS' MOTION FOR PRELIMINARY INJUNCTION - 1

NO. CV02-0229Z

DORSEY & WHITNEY LLP
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SEATTLE, WASHINGTON 98101
PHONE (206) 903-8800
FAX (206) 903-8820

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SHEPHERD AND ABBOTT

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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as a director of Outland Technologies (USA),)
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Technologies (USA), Inc.; and JAMES)
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Technologies (USA), Inc.,)

Plaintiffs,

vs.

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Alberta, Canada corporation; TERRY)
KNIGHT; KEN BELL; and GARRY)
MIHAICHUK,)

Defendants.

NO. CV02-0229Z

**DECLARATION OF KEN BELL IN
SUPPORT OF DEFENDANTS' MOTION
FOR PRELIMINARY INJUNCTION**

I, KEN BELL, declare:

1. I am more than eighteen years of age, have personal knowledge of the matters set forth herein, and am competent to testify thereto.

DECLARATION OF KEN BELL IN SUPPORT OF DEFENDANTS
MOTION FOR PRELIMINARY INJUNCTION - 1
NO. CV02-0229Z

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U.S. BANK BUILDING CENTER
1420 FIFTH AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101
PHONE: (206) 903-8800
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THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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Washington corporation; OUTLAND)
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liability company; TERRY MARTIN, as)
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Defendants.

NO. CV02-0229Z

[Defendants' Proposed]

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[Defendants' Proposed] ORDER GRANTING DEFENDANTS'
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THE HONORABLE THOMAS S. ZILLY

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Technologies (USA), Inc.,)

Plaintiffs,

vs.

OUTLAND TECHNOLOGIES, INC., an)
Alberta Canada corporation; TERRY)
KNIGHT; KEN BELL; and GARRY)
MIHAICHUK,)

Defendants.

NO. CV02-0229Z

**DEFENDANTS' MOTION FOR
PRELIMINARY INJUNCTION**

NOTE ON MOTION CALENDAR:
MAY 17, 2002

ORAL ARGUMENT REQUESTED



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Seattle, WA 98109
Phone: (206) 223-9426
Fax: (206) 223-9475
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Trans. No.

Firm Name: DORSEY & WHITNEY LLP

Requestor: L. Teves 42

Client Matter # 460159-2

Cause # CV02-0229Z

Case Name
Outland Technologies, Inc.

Date: 5/2/02

Documents

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Joe Abbott
Shepherd and Abbott
222 Grand Ave., Suite B
Bellingham, WA 98225

COPY

Special Instructions:

Deadline: 05/02/02

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THE HONORABLE THOMAS S. ZILLY

FILED ENTERED
LODGED RECEIVED
MAY 08 2002
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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FILED ENTERED
LODGED RECEIVED
MAY 17 2002
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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KNIGHT; KEN BELL; and GARRY)
MIHAICHUK,)

Defendants.

NO. CV02-0229Z

**STIPULATION AND PROPOSED
ORDER REGARDING MOTION FOR
PRELIMINARY INJUNCTION AND
MOTION FOR RELIEF FROM
DEPOSITION LIMITATIONS**

STIPULATION AND PROPOSED ORDER REGARDING MOTION
FOR PRELIMINARY INJUNCTION AND MOTION FOR RELIEF
FROM DEPOSITION LIMITATIONS - 1

NO. CV02-0229Z

ORIGINAL

DORSEY & WHITNEY LLP
U.S. BANK BUILDING CENTER
1420 FIFTH AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101
PHONE: (206) 903-8800
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STIPULATION

On May 2, 2002, the defendants filed Defendants' Motion For Preliminary Injunction, noted for May 17, 2002, seeking to enjoin plaintiff James Klassen, or anyone acting in concert with him or on his behalf, from selling or licensing rights to the "D-2 Technology," or from taking any action with respect to his patent application for the D-2 Technology. On May 3, 2002, the defendants filed Defendants' Motion For Relief From Deposition Limitations, noted for May 15, 2002, seeking to take a preliminary deposition of Mr. Klassen with respect to the issues involved in the preliminary injunction motion.

On May 3, 2002, the defendants received the Notice Of Withdrawal And Substitution Of Counsel filed by Mr. Klassen. Douglas R. Shepherd of Shepherd & Abbott withdrew as counsel for Mr. Klassen, but remained as counsel for the other plaintiffs. David Strout of Bush Strout & Kornfeld appeared as counsel for Mr. Klassen.

Mr. Strout is traveling abroad from May 3, 2002 until May 20, 2002. In order to accommodate his travel schedule, the parties have agreed to continue both motions. Moreover, Mr. Klassen himself represents that he has no present intention to sell, license or otherwise transfer the D-2 Technology.

The parties agree that both motions should be removed from the Court's calendar, but that either defendants or Mr. Klassen may re-note the motions on the Court's calendar at a future time. The parties further agree that until the Court rules on the defendants' preliminary injunction motion, that Mr. Klassen, and anyone acting in concert with him or on his behalf, should be enjoined from selling, licensing, or otherwise transferring any rights to the D-2 Technology and from taking any action with respect to Mr. Klassen's patent application for the D-2 Technology. Moreover, Mr. Klassen agrees that he will take no such action prior to entry of the agreed order.

STIPULATION AND PROPOSED ORDER REGARDING MOTION
FOR PRELIMINARY INJUNCTION AND MOTION FOR RELIEF
FROM DEPOSITION LIMITATIONS - 2

NO. CV02-0229Z

DORSEY & WHITNEY LLP
U.S. BANK BUILDING CENTER
1420 FIFTH AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101
PHONE: (206) 903-8800
FAX: (206) 903-8820

1
2 DATED this 8th day of May 2002

3 BUSH STROUT & KORNFELD

4 David Strout
5 By: David Strout, WSBA No. 9421
6 *per written authorization*
601 Union Street, #5500
7 Seattle, Washington 98101
8 Telephone: (206) 292-2110
Facsimile: (206) 292-2104

9 Attorneys for Plaintiff James Klassen

DORSEY & WHITNEY LLP

Brian W. Grimm
By: Randall R. Steichen, WSBA No. 20286
Brian W. Grimm, WSBA No. 29619

U.S. Bank Centre
1420 Fifth Avenue, Suite 3400
Seattle, Washington 98101
Telephone: (206) 903-8800
Facsimile: (206) 903-8820

Attorneys for Defendants Outland
Technologies, Inc., Terry Knight, Ken Bell,
and Garry Mihaichuk

12
13 **ORDER**

14 Based on the foregoing, it is hereby ordered that plaintiff James Klassen, and anyone
15 acting in concert with him or on his behalf, are enjoined from selling, licensing, or otherwise
16 transferring any rights to the D-2 Technology, or taking any action with respect to Mr. Klassen's
17 patent application for the D-2 Technology. This injunction shall remain in effect unless and until
18 the Court rules on Defendants' Motion For Preliminary Injunction, which along with
19 Defendants' Motion For Relief From Deposition Limitations, shall be removed from the Court's
20 calendar and may be re-noted by either defendants or Mr. Klassen at a future time.

21 DATED this 11th day of May 2002.

22
23 Thomas S. Zilly
24 THE HONORABLE THOMAS S. ZILLY
25 UNITED STATES DISTRICT JUDGE

STIPULATION AND PROPOSED ORDER REGARDING MOTION
FOR PRELIMINARY INJUNCTION AND MOTION FOR RELIEF
FROM DEPOSITION LIMITATIONS - 3

NO. CV02-0229Z

DORSEY & WHITNEY LLP
U.S. BANK BUILDING CENTER
1420 FIFTH AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101
PHONE: (206) 903-8800
FAX: (206) 903-8820

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that a true and correct copy of the foregoing document has been
3 furnished by hand delivery to:
4

5 Douglas R. Shepherd
6 James Abbott
7 Shepherd And Abbott
8 222 Grand Avenue, Suite B
9 Bellingham, WA 98225

David Strout
Bush Strout & Kornfeld
601 Union, Suite 5500
Seattle, WA 98101-2373

10 this 8th day of May, 2002.

11 
12 _____
13 Leslie D. Teves
14
15
16
17
18
19
20
21
22
23
24
25

STIPULATION AND PROPOSED ORDER REGARDING MOTION
FOR PRELIMINARY INJUNCTION AND MOTION FOR RELIEF
FROM DEPOSITION LIMITATIONS - 4

NO. CV02-02297.

DORSEY & WHITNEY LLP
U.S. BANK BUILDING CENTER
1420 FIFTH AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101
PHONE: (206) 903-8800
FAX: (206) 903-8820

COPY

PATENT
26537.00100

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

JAMES KLASSEN

Serial No: 10/072,095

Filed: February 8, 2002

For: ROTARY POSITIVE DISPLACEMENT
DEVICE



Art Unit: Not Assigned

Examiner: Not Assigned

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage for First Class mail in an envelope addressed to: Commissioner for Patents Washington D.C. 20231, on

July 15, 2002

Date of Deposit

Kathy Hinkley

Name

[Signature] 07/15/02

Signature

Date

**RESPONSE TO NOTICE TO FILE MISSING PARTS
OF APPLICATION**

Box MISSING PARTS
Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

In response to the Notice to File Missing Parts of Nonprovisional Application mailed on March 12, 2002, response to which is due August 12, 2002 with a two-month extension of time, the Applicant requests to proceed under 37 C.F.R. 1.47(b), which allows an entity showing sufficient proprietary interest in the matter to proceed with the application for patent.

For the present application for patent, the Applicant, Outland Technologies, Inc. ("Outland USA") is the assignee of the invention. However, the inventor, James Klassen ("Klassen"), has refused to sign the declaration needed to accompany this application for patent. Klassen's unexecuted declaration is attached. Also attached to this response and made a part hereof is a copy of the Applicant's "Petition To Proceed With This Application For Patent Under 37 C.F.R. 1.47(b)" (sent under separate cover to the Office of Petitions), including proof of the pertinent facts and supporting documentation, showing that its action in prosecuting this application for patent is necessary to both preserve the rights of the parties and to prevent irreparable damage. The Applicant requests that its Petition be granted and that it be permitted to proceed with the prosecution of the present application for patent.

Enclosed are the following:

- ☒ A copy of the "Notice to File Missing Parts of Application Filing Date Granted."
- ☒ A copy of the "Declaration and Power of Attorney" *not* executed by the inventor(s).
- ☒ Surcharge for late filing of Declaration.
Fee: \$ 65 ☐ Check enclosed
- ☒ A "Petition for Extension of Time" for three month(s).
Fee: \$ 460 ☐ Check enclosed
- ☒ Copy of "Petition To Proceed With This Application For Patent Under 37 C.F.R. 1.47(b)," with Exhibits A, B, C1, C2, C3 and D
- ☒ Copy of "Statement of Last Known Address of Inventor" submitted with "Petition To Proceed With This Application For Patent Under 37 C.F.R. 1.47(b)."
- ☒ Copy of "Declaration of JoAnne S. Redmann In Support of Petition To Proceed With This Application For Patent Under 37 C.F.R. 1.47(b)," with Exhibits 1 and 2
- ☒ Copy of "Petition Under 37 C.F.R. § 1.78(a)(6) For Acceptance of Unintentionally Delayed Priority Benefit Claim"
- ☒ Copy of "Preliminary Amendment to Assert Priority Claim Under 35 USC § 119(e)"
- ☒ Return postcard.

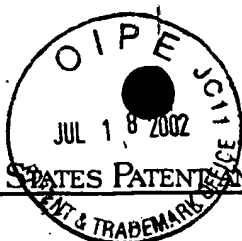
The Commissioner is authorized to charge any underpayment to Deposit Account No. 50-1796, referencing docket number 26537.00100. A copy of this document is enclosed.

Respectfully submitted,
CROSBY, HEAFEY, ROACH & MAY

Date: July 15, 2002

By: JoAnne S. Redmann
JoAnne S. Redmann
Registration No. 31,482
Attorney for Applicant

Crosby Heafey Roach & May
1901 Avenue of the Stars, Suite 700
Los Angeles, CA 90067
Phone: (310) 734-5200
Fax: (310) 734-5299



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/072,095	02/08/2002	James Klassen	26537.00100

CONFIRMATION NO. 9459

28983
CROSBY HEAFEY ROACH & MAY
1901 AVENUE OF THE STARS, SUITE 700
LOS ANGELES, CA 90067

FORMALITIES LETTER



OC000000007617958

Date Mailed: 03/12/2002

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

Filing Date Granted

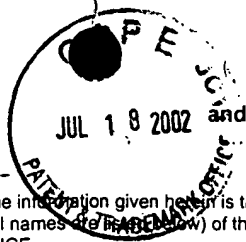
An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(l) of \$65 for a small entity in compliance with 37 CFR 1.27, must be submitted with the missing items identified in this letter.
- The balance due by applicant is \$ 65.

*A copy of this notice **MUST** be returned with the reply.*

H. Truong
Customer Service Center
Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE



**DECLARATION
and POWER OF ATTORNEY**

☒ ORIGINAL
☐ CONTINUATION
☐ DIVISIONAL

As a below named inventor, I declare that the information given herein is true, that I believe that I am the original, first and sole inventor (if only one name is listed as 1 below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

ROTARY POSITIVE DISPLACEMENT DEVICE,

the specification of which is attached hereto unless the following box is checked:

☐ was filed on _____ as United States Application Number or PCT International Application Number _____
and was amended on _____.

My residence, post office address and citizenship are as stated below next to my name.

I acknowledge my duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations § 1.56(a). I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above. I hereby claim foreign priority benefits under Title 35, United States Code, § 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

PRIOR FOREIGN APPLICATION(S)

COUNTRY	APPLICATION NUMBER	DATE OF FILING Month Day Year	PRIORITY CLAIMED UNDER 35 U.S.C. 119
---------	--------------------	----------------------------------	---

I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

60/267,969	February 8, 2001	pending
(Application Serial No.)	(Filing Date)	(Status)

POWER OF ATTORNEY: As a named inventor, I hereby appoint the following attorney(s) and/or Agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

J. William Wigert, Reg. No. 24,582; JoAnne Redmann, Reg. No. 31,482; Stefan J. Kirchanski, Reg. No. 36,568; Nathan P. Koenig, Reg. No. 38,210; Doyle B. Johnson, Reg. No. 39,240; John W. Carpenter, Reg. No. 39,129; and Tobi C. Clinton, Reg. No. 43,553

.Send correspondence to:

☒ Customer Number **28983**



CROSBY, HEAFEY, ROACH & MAY
1901 Avenue of the Stars, Suite 700
Los Angeles, CA 90067

DIRECT TELEPHONE CALLS TO:
JoAnne S. Redmann
310-734-5277

(Please Print)

1	Name of Inventor	Residence: CITY	STATE or COUNTRY
	James KLASSEN	Irvine	California
2	Post Office Address	CITIZENSHIP	
	2253 Martin Street #420C, Irvine, CA 92612	CANADA	
3	Name of Inventor	Residence: CITY	STATE or COUNTRY
4	Post Office Address	CITIZENSHIP	
5	Name of Inventor	Residence: CITY	STATE or COUNTRY
6	Post Office Address	CITIZENSHIP	

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

SIGNATURE OF INVENTOR 1	SIGNATURE OF INVENTOR 2
DATE	DATE
SIGNATURE OF INVENTOR 3	SIGNATURE OF INVENTOR 4
DATE	DATE